123-369

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 1002.

THOMAS J. MUSTIN, JOHN D. FORD, WILLIAM W. FOULKROD AND WILLIAM SYCKELMORE, JUNIOR, TRADING AS THOMAS J. MUSTIN AND COMPANY, PLAINTIFFS IN ERROR,

vs.

JOHN CADWALADER, COLLECTOR OF CUSTOMS FOR THE DISTRICT OF PHILADELPHIA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED AUGUST 13, 1887.

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INDEX.

	Original.	Print.
Writ of error	1	1
Citation	2	1
Proof of service of citation	3	2
Caption	4	2
Petition for certiorari	6	2
Certiorari	9	3
Transcript from State court	11	4
Docket entries	11	5
Præcipe for summons	12	5
Summons	13	5
Sheriff's returns	14	6
Appearance for defendant	15	6
Narr	16	6
Bill of particulars	18	7
Plea	19	8
Jury called	21	8
Verdict	21	8
Judgment	22	8
Bill of exceptions	23	9
Evidence for plaintiffs	24	9

JUDD & DETWEILER, PRINTERS, WASHINGTON, AUGUST 20, 1887.

	Original.	Print.
Testimony of Wm. O. Hempstead	25	10
Wm. F. Read	32	13
Wm. O. Hempstead (recalled)	33	14
Evidence for defendant	41	17
Testimony of Wm. F. Read	41	18
Henry A. Fisher	49	24
Lewis Heyl	50	24
John Cadwalader	52	26
Wm. F. Read (recalled)	60	31
Charge to jury	62	31
Defendant's points	74	37
Plaintiff's' points	74	37
Exceptions to charge	76	38
Extracts from Treasury Regulations	82	42
Order fixing amount of security	132	66
Note of deposit of security	133	66
Clerk's certificate	134	66

1 UNITED STATES, } *Sct:*
Eastern District of Pennsylvania, }

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, Greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you between Thomas J. Mustin, John D. Ford, William W. Foulkrod, and William Syckelmore, Jr., trading as Thomas J. Mustin and Company, plaintiffs, and John Cadwalader, collector of customs for the district of Philadelphia, defendant, in a plea of trespass on the case, a manifest error has intervened, to the great damage of the said Thomas J. Mustin, John D. Ford, William W. Foulkrod, and William Syckelmore, Jr., trading as Thomas J. Mustin and Company, as in their complaint has been stated, and it is just and proper that the error, if any there be, should be corrected in due manner and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 26th day of July, A. D. one thousand eight hundred and eighty-seven, and in the one hundred and twelfth year of the Independence of the said United Sates.

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

SAMUEL BELL,
Clerk of Circuit Court U. S.

2 THE UNITED STATES OF AMERICA, *ss:*

To John Cadwalader, collector of customs for the district of Philadelphia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein Thomas J. Mustin, John D. Ford, William A. Foulkrod, and William Syckelmore, Jr., trading as Thomas J. Mustin and Company, — plaintiffs and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff- in error as in said writ of error mentioned shall not be corrected (if found

to be erroneous) and why speedy justice should not be done to the parties in that behalf.

Witness my hand this eighth day of August, in the year of our Lord one thousand eight hundred and ——.

WM. BUTLER, *Judge.*

3 I hereby accept service of the within writ.
8, 10, '87.

JOHN K. VALENTINE,
Attorn'y for Def't.

4 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } *ss:*

In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit. October session, 1886.

THOMAS J. MUSTIN, JOHN D. FORD, WILLIAM W. FOULKROD, and WILLIAM SYCKELMORE, Jr., Trading as Thomas J. Mustin and Company,
vs.
JOHN CADWALADER, Collector of Customs for the District of Philadelphia. } No. 68.

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1886, No. 68.

It is thus contained:

Be it remembered that on the thirty-first day of December, in the year of our Lord one thousand eight hundred and eighty-
5 six, John Cadwalader, collector of customs for the district of Philadelphia, by his attorney, John K. Valentine, Esquire, comes into court here and presents his petition for certiorari, which, being read, is in the words and figures following, to wit:

6 In the Circuit Court of the United States for the Eastern District of Pennsylvania, in the Third Circuit.

The petition of John Cadwalader, collector of customs for the district of Philadelphia, respectfully represents:

That a suit has been commenced by summons case against him, as defendant, by Thomas J. Mustin, John D. Ford, William W. Foulkrod, and William Syckelmore, Jr., trading as Thomas J. Mustin and Company, in the court of common pleas No. 4 for the county of Philadelphia, in the State of Pennsylvania, to December term, 1886, No. 401.

That the said suit is brought on account of an act done by him under the revenue laws of the United States, as collector of the customs for the district of Philadelphia; the said suit being to recover a certain sum of money paid for and on account of the said plaintiffs to the said defendant as collector aforesaid, as duties on certain merchandise.

You petitioner respectfully prays that the said cause may be en-

tered on the docket of your honorable court and proceeded in as a cause therein originally commenced, and that a writ of certiorari be immediately issued by the clerk of your honorable court to the said court of common pleas No. 4 for the county of Philadelphia, to send to the said circuit court of the United States the record and proceedings in said cause, according to the provisions of the act of Congress in such case made and provided.

And he will ever pray, &c.

JOHN CADWALADER,
Collector of Customs.

John Cadwalader, being duly sworn, says that the facts set forth in the above petition are true to the best of his knowledge and belief.

JOHN CADWALADER.

Sworn and subscribed before me this 28th day of December, 1886.
[SEAL.] WM. McLEAN,
Notary Public, Philadelphia.

I hereby certify that, as counsel for the above petitioner, I have examined the proceedings against him and carefully enquired into all the matters set forth in the above petition, and that I believe the same to be true.

JOHN K. VALENTINE,
Att'y for Def't.

7 [Endorsed:] No. 68. Oct. Sessions, 1886. Circuit court, United States, eastern district of Pennsylvania, in the third circuit. Thomas J. Mustin *et al. vs.* John Cadwalader, collector, &c. Petition for certiorari. John K. Valentine, attorney for petitioner. Filed 31 Dec., 1886. Samuel Bell, clerk, M.

8 And afterwards, to wit, on the day and year last aforesaid, on motion of John K. Valentine, Esquire, United States attorney, a writ of certiorari for the removal of this cause from the court of common pleas No. 4 of Philadelphia county to this court is allowed and issued, which with its return and endorsement thereto is in the words and figures following, to wit:

9 UNITED STATES OF AMERICA, } *Set:*
Eastern District of Pennsylvania, }

The President of the United States to the honorable the judges of the court of common pleas No. 4 for the county of Philadelphia, in the State of Pennsylvania, Greeting:

Whereas lately in your said court of common pleas No. 4 a suit was commenced against John Cadwalader, collector of customs for the district of Philadelphia, by Thomas J. Mustin, John D. Ford, William W. Foulkrod, and William Syckelmore, Jr., trading as Thomas J. Mustin and Company, to your December term, 1886, No. 401, which said suit, as it is said, is still pending before you in the

4 said court of common pleas No. 4 undetermined; and whereas on the application of the said John Cadwalader, collector, &c., to the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, on a suggestion, supported by proper evidence, that the said suit was brought on account of an act done by him, under color of his office, as collector of customs for the district of Philadelphia, the said suit having been brought to recover certain moneys paid by the said plaintiff- to the said John Cadwalader, collector, &c., aforesaid, for duties on certain merchandise, &c., claimed to be due and owing from the said plaintiff- to the United States of America, and praying that a writ of certiorari may be immediately issued by the clerk of said circuit court of the United States, directed to the said court of common pleas No. 4, to send to the said circuit court of the United States the record and proceedings in the said cause, according to the provision of the act of Congress in such case made and provided:

Wherefore you are hereby commanded to transmit, under your seal, the record and proceedings of the said suit with all things thereunto relating, unto the said circuit court of the United States, to be holden at Philadelphia, for the eastern district of Pennsylvania, in the third circuit, on the first Monday of January next, plainly and distinctly, in as full and ample manner as it now remains before you, together with this writ, so that the said circuit court of the United States may be able therein to proceed and do what shall appear of right ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 31st day of December, A. D. 1886, and in the 111th year of the Independence of the United States.

[SEAL.]

SAMUEL BELL,
Clerk of Circuit Court U. S.

10 [Endorsed:] No. 68. October sess., 1886. Circuit court, U. S. Mustin *et al. vs.* Cadwalader, collector, &c. Writ of certiorari. Filed 25 Feb., 1887. Samuel Bell, clerk, M.

11 *Exemplification.*

STATE OF PENNSYLVANIA, *Philadelphia County,* } *Sct:*

Among the records and proceeding- of the court of common pleas No. 4 for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record, at No. 401 of Dec. term, 1886, to wit:

Docket Entries. December Term, 1886.

THOMAS J. MUSTIN, JOHN D. FORD, WILLIAM W. FOULKROD, and WILLIAM SYCKELMORE, Jr., Trading as Thomas J. Mustin and Company,
vs.
JOHN CADWALADER, Collector of Customs for the District of Philadelphia. } 401.

F. P. Prichard. Valentine. Dec. 28, '86.
Sum's case. Exit Dec. 21, 1886. Ret. 1 Mon., Jan., 1887. Served. Jan'y 8, 1887.—Certiorari from circuit court of U. S. for E. D. of Pa. (of Oct. Sess., 1886, No. 68) bro't into office.
Jan'y 12, 1887.—Narr filed.
Certified from the record Feb. 24, '87.
[SEAL.] E. J. LINDSAY,
Pro Proth'y.

12 THOMAS J. MUSTIN, JOHN D. FORD, WILLIAM W. FOULKROD, and WILLIAM SYCKELMORE, Jr., Trading as Thomas J. Mustin and Company,
vs.
JOHN CADWALADER, Collector of Customs for the District of Philadelphia. } C. P. No. D. 86. No. —.

Issue summons, case as above, ret'ble 1 Mon., Jan'y, 1887.
Dec. 20, '86.
FRANK P. PRICHARD, M.

Endorsed: 401. D., 86. C. P. No. 4. Mustin *vs.* Cadwalader Praecipe for sum's case. Filed Dec. 21, 1886. W. MacCain, pro proth'y. F. P. Prichard.

Summons.

13 COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania to the sheriff of Philadelphia county, Greeting:

[SEAL.] We command you to summon John Cadwalader, collector of customs for the district of Philadelphia, late of your county, so that he be and appear before our judges, at Philadelphia, at our court of common pleas No. 4 for the county of Philadelphia, to be holden at Philadelphia, in and for the said city and county of Philadelphia, the first Monday of January next, there to answer Thomas J. Mustin, John D. Ford, William W. Foulkrod, and William Sekelmore, Jr., trading as Thomas J. Mustin and Company, of a plea of trespass on the case, etc.; and have you then there this writ.

Witness the Honorable M. Russell Thayer, president of our said

court, at Philadelphia, the 21st day of Dec'r, in the year of our Lord one thousand eight hundred and eighty-six.

W. MacCAIN,
Pro Prothonotary.

14 [Endorsed:] 401. Dec. Term, 1886. C. P. No. 4. Mustin vs. Cadwalader. Summons case. F. P. Prichard.

Served John Cadwalader, collector of customs for the district of Philadelphia, by giving to him, December 23, 1886, a true and attested copy of the within writ and making known the contents thereof.

So answer.

JAMES G. GOSCH,
Deputy Sheriff.
W. ELLWOOD ROWAN, *Sheriff.*

15 C. P. No. 4. Dec. Term, 1886.

THOMAS J. MUSTIN *et al.*
vs.
JOHN CADWALADER, Collector, &c. } No. 401.

To Proth'y C. P.:

Please enter my appearance for the defendant in the above case.

JOHN K. VALENTINE,
Att'y for Def't.

(Endorsed:) 401. Dec. T., 1886. C. P. No. 4. Mustin *vs.* Cadwalader. Order for appearance. Filed Dec. 28, 1886. J. Kinderdine, pro proth'y. John K. Valentine, att'y for def't.

16 PHILADELPHIA COUNTY, *ss:*

In the Court of Common Pleas No. 4 for Philadelphia County, of Dec'r Term, 1886.

THOMAS J. MUSTIN *et al.*
vs.
JOHN CADWALADER, Collector. } No. 401.

John Cadwalader, collector of customs for the district of Philadelphia, late of the county aforesaid, was summoned to answer Thomas J. Mustin, John D. Ford, William W. Foulkrod, and William Syckelmore, Jr., trading as Thomas J. Mustin and Company, of a plea of trespass, on the case, &c.

Whereupon the said Thomas J. Mustin, John D. Ford, William W. Foulkrod, and William Syckelmore, Jr., trading as Thomas J. Mustin and Company, by Frank P. Prichard, their attorney, complain—

17 *And also* for that whereas the defendant, on the first day of December, in the year of our Lord one thousand eight hundred and eighty-six, at the county aforesaid, was indebted to the

plaintiffs in fifty thousand dollars, for goods then and there sold and delivered by the plaintiffs to the defendant at his request;

And also in the further sum of fifty thousand dollars for goods then and there bargained and sold by the plaintiffs to the defendant at his request;

And also in the further sum of fifty thousand dollars for work then and there done and materials for the same provided by the plaintiffs for the defendant at his request;

And also in the further sum of fifty thousand dollars for money then and there lent by the plaintiffs to the defendant at his request;

And also in the further sum of fifty thousand dollars for money then and there paid by the plaintiffs for the use of the defendant at his request;

And also in the further sum of fifty thousand dollars for money then and there had and received by the defendant for the use of the plaintiffs;

And also in the further sum of fifty thousand dollars for money found to be due from the defendant to the plaintiffs on an account then and there stated between them;

And also in the further sum of fifty thousand dollars for interest then and there due and payable for the forbearance by the plaintiffs, at the defendant's request, for moneys before then due and owing from the defendant to the plaintiffs.

And the defendant afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, in consideration of the several last-mentioned premises, respectively, then and there promised the plaintiffs to pay them the said several last-mentioned moneys, respectively, on request, yet the defendant hath disregarded his promises and hath not paid any of the said moneys or any part thereof, to the damage of the plaintiffs fifty thousand dollars.

And therefore they bring suit, &c.

Jan'y 4, 1887.

FRANK P. PRICHARD,
Attorney for Plaintiff.

H. V. M.

[Endorsed:] Court of common pleas, No. 4, Philadelphia county. Dec. term, 1886. No. 401. T. J. Mustin *et al. vs.* Cadwalader. Narr. in assumpsit. Filed Jan. 12, 1887. F. Briggs, pro proth'y F. P. Prichard, attorney for plaintiff. Jan'y 4, '87.

18 *Bill of Particulars.*

Name of importer (for all the importations)—Thomas J. Mustin & Co.
Description of goods—Worsted yarn.
Name of vessel—Werra.
Whence imported—Bremen.
Date of invoice—June 12, 1886.
Amount of duty illegally exacted—346.09.
Date of entry at custom-house—July 1, 1886.

Date of payment of duties in excess—Nov. 12, 1886; Aug. 19, 1886; Oct. 29, 1886.
Protest filed—Sept. 11, 1886.
Date of appeal to Secretary of the Treasury—Sept. 11, 1886.
Date of Secretary's decision—Dec. 14, 1886.

19 And afterwards, to wit, on the 23rd day of February, A. D. 1887, the defendant, by his attorney, comes into court here and files his plea in the words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Pennsylvania, in the Third Circuit. Oct. Sessions, 1886. No. 68.

THOMAS J. MUSTIN *et al. vs.* JOHN CADWALADER, Collector, &c.

And the said defendant, by John K. Valentine, Esquire, his attorney, comes and defends the wrong and injury when, &c., and saith that he did not undertake or promise in manner and form as the said plaintiffs have above thereof complained against him, and of this he puts himself upon the country.

JOHN K. VALENTINE,
Attorney for Defendant.

20 [Endorsed:] No. 68. Oct. sessions, 1886. In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit. Thomas J. Mustin *et al. vs.* John Cadwalader, collector, &c. Filed 23 Feb., 1887. Samuel Bell, clerk, &c. Plea of defendant. John K. Valentine, attorney for defendant.

21 And thereupon it is ordered that a jury come to try the issue joined in this cause.

And afterwards, to wit, on the 4th day of April, A. D. 1887, came the parties aforesaid, and the jurors of the jury aforesaid being called likewise came, to wit:

1. William L. Gorgas,
2. John A. Clare,
3. Joseph K. Wheeler,
4. Edward A. Depeu,
5. Ephraim M. Woomer,
6. Henry Jungerich,
7. John Hawkins,
8. Lawrence T. Paul,
9. Joseph Lewis,
10. William Waterall,
11. Samuel Detwiler,
12. Edward H. Wendel,

who are duly empanelled, returned, chosen, tried, and sworn or affirmed to speak the truth in the issue joined, &c.

And afterwards, to wit, on the seventh (7) day of April, A. D. 1887, the jurors aforesaid upon their oaths or affirmations aforesaid, respectively, do say that they find for the defendant.

22 And thereupon, forasmuch as the court now here is not as yet advised about giving judgment of and upon the premises, day is therefore given to the said parties to be before the court in four days, to wit, on the eleventh day of April, A. D. 1887, for hearing judgment of and upon the premises, because the said court here is not yet advised thereupon.

At which day, to wit, the eleventh day of April, A. D. 1887, before the judges of said court comes the said John Cadwalader, collector, &c., by his attorney aforesaid. Whereupon, the premises being seen and fully understood by the court here and mature deliberation being had thereon, it is ordered that judgment be entered in favor of the defendant and against the plaintiffs.

Whereupon judgment is entered accordingly.

23 *Bill of Exceptions.*

United States Circuit Court, Eastern District of Pennsylvania. Oct. Sess., 1886.

THOMAS J. MUSTIN, JOHN D. FORD, WILLIAM W. FOULKROD, and WILLIAM SYCKELMORE, Jr., Trading as Thomas J. Mustin, & Co.,
vs.
JOHN CADWALADER, Collector, &c. } 68.

The issues in this cause came on to be tried at the April term, 1886, of this court, at a session thereof held in the city of Philadelphia on the 4th, 5th, 6th, and 7th days of April, 1886, before the Honorable William McKennan, circuit judge, and a jury duly empaneled and sworn, the parties being represented by their counsel, plaintiffs by Mr. Frank P. Prichard, Mr. H. E. Tremain, and Mr. Alex. P. Ketchum and the defendant by United States district attorney, John K. Valentine. During the course of the trial and before the rendering of the verdict the counsel for the plaintiffs did take and allege certain exceptions to certain rulings of the court in its admission and exclusion of testimony and in its charge and direc-
24 tions and refusals to charge and direct the jury; all of which said exceptions were by the court duly allowed and are hereinafter specifically set forth, together with so much of the testimony and proceedings at said trial as are necessary or pertinent thereto.

To sustain the issues upon their part the plaintiffs read in evidence certain parts of the general regulations under the customs laws issued in 1884 and in force at the time of the plaintiffs' importation that was the subject of this controversy, namely, chapter III of said regulations, covering pages 197 to 213, articles 447 to 506, inclusive.

Here also insert from chapter V, at page 554, articles 1399 to 1417, inclusive.

Also the following Treasury document or order of the Secretary of the Treasury, in force at the time of the importation in question, and made part of Treasury document number 712, "Published for the information and guidance of the officers of customs and others concerned, Daniel Manning, Secretary," wherein is included the following instructions, known as synopsis number 6957, dated June 9th, 1885.

Insert this document here in full.

Insert also from the same series of decisions synopsis number 7029 and synopsis number 7800 and also synopsis number 7976.

2—1002

For all of the foregoing documents see p.p. 44-66- of this record, where they are set out in full.

After reading the foregoing orders, in force at the time of the importation in controversy, plaintiffs produced further testimony as follows:

25 WILLIAM O. HEMPSTEAD, called as a witness for the plaintiffs, was duly sworn.

His testimony tended to show as follows:

I am a custom-house broker in Philadelphia, and attended to the custom-house business in relation to a certain importation which was made by the plaintiffs' firm of Thomas J. Mustin and Company by the steamship Werra, whereof the plaintiffs made entry for warehouse in the custom-house July first, 1886. I recognize before me that entry and the invoice upon which it was based, which was an invoice of five packages, marked "T. J. M. & Co., 2710, 2711, 2712, 2713, 2714. The entry was sworn to at the time by one of the members of plaintiffs' firm. According to the entry the goods appeared to be worsted yarns, costing under sixty cents a pound, and were entered by the plaintiffs as dutiable at eighteen cents per pound and thirty-five per cent. ad valorem. According to the entry the dutiable value, upon which an estimated deposit was then made, was $922. According to that estimate the amount of duty payable was $611.42. This original entry thus filed and sworn to corresponds in every detail with the value expressed on the invoice.

Afterwards the invoice, when acted upon by the appraiser, was advanced—that is to say, by the appraiser's report its valuation was increased from $922 to $1,041. This increase changed the rate of duty from eighteen cents a pound to twenty-four cents a pound,
26 and thus resulted in a total duty of $749.31 instead of $611.42; and, in addition thereto, a penal duty or additional duty (of twenty per cent.) of $208.20, making a total duty exacted by the customs officers of $957.51, or, in all, $346.09 beyond the original amount ($611.20) stated by the plaintiffs on entry as the proper duty. The penal duty of $208.20 was arrived at by calculating twenty per cent. upon the appraised value.

It was for the payment of this penal duty and of the entire excess of $346.09, of which the penal duty was a part, and interest that this action was brought to recover. The payments were made under protest, in accordance with the statute, and appeals were subsequently taken and the suit instituted in accordance with the statutory provisions in that respect.

The statutory protests and appeals that were read in evidence need not be here set out in full, because it will suffice to state that the claims of the plaintiffs, as made upon the trial and as hereinafter set out, were in accordance with the claims made in the statutory protest filed against the exactions sued for.

The testimony of said witness then further tended to show that—

After the invoice had been advanced in value by the appraiser as above testified to, and the importer had been by the collector so notified, the witness on behalf of the importer on July 7th, 1886, filed with the collector a notice claiming reappraisement in the

27 form prescribed by Treasury Regulations, article 463, in answer to which it was mutually agreed between the collector's representative and the plaintiffs that the proceedings should be held on August 30th; on which date, pursuant to a verbal notice, the witness appeared before the board, which was composed of General Appraiser Lewis Heyl and Merchant Appraiser William F. Read.

Q. Before you went before that board had you been informed that William F. Read had been appointed upon this matter?

A. No, sir; I had no knowledge on that subject. When I went before that board I entered a formal protest against the action of the person designated by the collector to sit as a merchant appraiser in connection with the general appraiser. I filed a paper which I then prepared as soon as it could be written.

(This paper hereinafter appears in full.)

This paper was here offered in evidence by plaintiffs and objected to by the defendant's counsel as immaterial, and also on the further ground that as there had been a merchant appraisement the same was final and conclusive as to the value of the goods, and that it could only be attacked upon the ground of fraud.

Plaintiffs' counsel claimed that the evidence was competent and material, and that proof as to the value of the goods should be received.

Pending argument upon the defendant's objections plaintiffs withdrew the offer above made at that stage of the case, with leave to renew the same (and the same was renewed, resulting in its exclusion under the ruling of the court in its opinion hereinafter stated and due exception thereto by plaintiffs' counsel) after pro-

28 ducing some further testimony, which was then produced as follows:

Testimony of the witness HEMPSTEAD being continued, he said:

I appeared before the board on August 30th and on August 31st in respect to this importation. The general appraiser, Mr. Heyl, in connection with Mr. Read assumed to conduct it. I recognize the papers shown me as the report of Mr. Heyl and Mr. Read upon which the liquidation of the collector was made. I filed the protests and appeals in due course of business within ten and thirty days, respectively, after such liquidation. There was a decision of the Secretary of the Treasury on that appeal, dated December 14th, 1886 (which was less than ninety days before this suit was instituted).

The plaintiffs then read in evidence the following papers produced by the collector from the files of the custom-house and relating to the plaintiffs' importation in controversy, namely, the invoice above referred to, the entry, the liquidation of said entry, the appraiser's original report upon the invoice, the importer's notice of dissatisfaction, and claiming reappraisement. These papers have already been hereinbefore sufficiently described.

Plaintiffs also read in evidence the following paper:

29 "CUSTOM-HOUSE, PORT OF PHILADELPHIA,
"COLLECTOR'S OFFICE, *August* 28, 1886.

"SIR: You are hereby appointed to appraise a lot of worsted yarn which has been entered at this port, the importer having requested a new appraisement thereof, in accordance with the provisions of the several acts of Congress providing for the regulating of the appraisement of imported merchandise, and you are requested to appear at the office of the general appraiser at 1 o'clock p. m. on Monday, the 30th day of August, 1886, to appraise said goods pursuant to law.

"Before entering upon the duty indicated in the above appointment you will please call at this office and take the requisite oath.

"I am, very resp'y, y'r ob'd't se'v't,

"CHARLES HENRY JONES,
"*Special Deputy Collector.*

"To Wm. F. Read, Esq., No. 213 Chestnut St."

Also the following paper:

30 "*Oath of Merchant Appraiser.*

"CUSTOM-HOUSE, PHILADELPHIA,
"COLLECTOR'S OFFICE, *August 30th*, 1886.

"I, the undersigned, appointed by the collector of the district of Philadelphia to appraise a lot of worsted yarns imported per 'Werra' from Bremen, the importer having requested a new appraisement thereof, in accordance with law, do hereby solemnly swear diligently and faithfully to examine and inspect said lot of worsted yarns and truly to report, to the best of my knowledge and belief, the actual market value or wholesale price thereof, at the period of the exportation of the same to the United States, in the principal markets of the country from which the same was imported into the United States, in conformity with the provisions of the several acts of Congress providing for and regulating the appraisement of imported merchandise, so help me God.

"(Signed) WM. F. READ.

"Sworn to and subscribed before me this 30th day of August, 1886.

"(Signed) CHARLES HENRY JONES,
"*Sp'l Dep. Collector.*"

Also the following paper:

31 "PORT OF PHILADELPHIA,
"GENERAL APPRAISER'S OFFICE, *August 31st*, 1886.

"SIR: We have examined five cases zephyr worsted yarn imported by Thomas J. Mustin & Co. in the S. S. 'Werra' & R. R., from Bremen, and do hereby certify that, in our opinion, the actual market value or wholesale price of the said goods at the period of the exportation thereof to the United States, in the principal markets

of the country from which the same were imported into the United States, was, and we do therefore appraise the same, as follows:

Marks.	Numbers.	Kilogrammes.	Description of merchandise..	Per kilo. m'ks.
T. J. M. & Co.	2710	113,250	Raw Moos, 2 faa..	5.70
Do.	2711	43,000	Cardinal, 2 faa.	6.30
		43,000	Do. 2 "	
		22,300	Russi au green, 2 faa.	
		44,000	Brown Saxony, 3 "	
		22,500	Pink " 3 "	
		174,800		
Do.	2712	90,500	Black Moos, 2 faa.	6.00
		86,100	Cream white, 2 "	
		176,600		
Do.	2713	45,200	Garnet Moos, 2 faa.	6.30
		21,500	Blue, 2 "	
		44,200	Dark navy, 2 "	
		21,600	Blue Saxony, 3 "	
		132,500		
Do.	2714	43,700	Pink Moos, 2 faa.	6.30
		43,000	Blue " 2 "	
		43,600	Brown " 2 "	
		130,300		

Discount, 2 ℔.

(Signed) WM. F. READ,
Merchant Appraiser.

(Signed) LEWIS HEYL,
General Appraiser.

32 At this point examination of the witness Hempstead was suspended and WILLIAM F. REED, also called as a witness for the plaintiffs, was duly sworn. His testimony was as follows:

I took the merchant appraiser's oath on the paper now shown me (being the paper above read in evidence). I performed the duties of my office on or about August 30th and 31st and signed the appraisement, which is signed also by Mr. Lewis Heyl (being the appraisement reported, above set out).

Q. You saw the samples, did you not?
A. I did, sir.
Q. How many samples were there?
A. I cannot remember now, sir.
Q. Do you remember which cases you saw?
A. I cannot.
Q. Do you remember which package?
A. No, sir; not at this time; I kept no record of that.
Q. You acted on the samples alone, did you not?

A. We acted on the samples and on the evidence submitted.
Q. You did not see the packages yourself?
A. No, sir.
Q. You called two witnesses, did you not?
A. There were two witnesses present; yes, sir.
Q. Did you administer the oath to them?
A. I cannot remember; I think Mr. Heyl did.
Q. Could you recognize the samples?
A. I could not.
Q. Referring to the identical goods represented by the samples which were before you at that time, were you familiar with the
33 character and value of the goods as articles of importation from Berlin?

Plaintiffs proposed to show that the witness was not familiar and also what was the character and value of such goods.

To this question and testimony defendant objected as immaterial and irrelevant. Pending the consideration of this objection and offer, in connection with the previous objection and offer not yet ruled upon, plaintiffs, by leave of the court, recalled the witness, WILLIAM O. HEMPSTEAD, who further testified:

August 30th, 1886, was the first day that Messrs. Mustin & Co. had any knowledge of who comprised this board; on that day I attended before Mr. Heyl and Mr. Read.

Plaintiffs then offered testimony tending to show that immediately on August 30th, 1886, objection was made on behalf of the plaintiffs to Mr. William F. Read, acting as a merchant appraiser in this case, upon the ground that he was not a discreet and experienced merchant familiar with the character and value of the goods in question, and also that the proceedings were then adjourned in order that such a protest might be reduced to writing and filed with the collector, and also that subsequently, on August 31st, the board reconvened, composed of the same members, and proceeded to conduct the appraisement against the importers' objections and in the
34 manner described by Mr. Read in his testimony above set forth, and also that the paper filed on August 30th, 1886, with the collector was in the following words, to wit:

"CUSTOM-HOUSE, *Aug.* 30, 1886.

"Dep. collector & auditor:

"Please return your answer to O. G. Hempstead & Son, custom-house forwarding agents, 407 Library street, Philadelphia.

"PHILADELPHIA, *August* 30, 1886.

"Hon. John Cadwalader, coll. of customs, Philadelphia.

"SIR: We would most respectfully protest against the appointment of Mr. William F. Read as merchant appraiser and against his acting in that capacity in conjunction with General Appraiser Heyl in the case of reappraisement of certain worsted yarns imported by us per S. S. 'Werra' & P. R. R. from Bremen via N. Y., June 28th, 1886, claiming that the said William F. Read is not an importer of

or dealer in the particular quality or kind of yarn in dispute, and that he is not acquainted with the foreign market values of the same, and that, therefore, his appointment is not in conformity with the customs regulations on this subject. See article 466, which provides that the person so selected shall be 'familiar with the character and value of the goods in question,' R. S. 2930. We therefore ask that the regulations may be complied with and that some more suitable person be appointed to act in our case.

"Very resp'y yours,

"(Signed) THOS. J. MUSTIN & CO."

The offer just described in connection with the plaintiffs' previous offers and the objections made by the defendant's counsel to the whole of said offers and each and every part thereof, including the foregoing paper, as all incompetent, immaterial, and irrelevant, were then argued in full by counsel on both sides, at the conclusion of which argument the court rendered the following opinion:

35 The COURT: I have listened with a great deal of interest to the argument of the plaintiffs on the constitutionality of this act. Impressive as that argument was, there is one consideration, however, which induces me to assume the act as constitutional, at least not to declare it unconstitutional. It must excite our special wonder that, in the multitude of cases brought before the Supreme Court, the question has never suggested itself to the counsel concerned, or to any of the courts who have passed upon the subject, or to the Supreme Court of the United States. I cannot forget the admonition given me by one of our most eminent judges of the Supreme Court of the United States, at the very beginning of my judicial career, never to butt my head against the Constitution of the United States where I could avoid it. Under the present circumstances, I think, it would be unwise for me to declare an act of Congress and proceedings under it unconstitutional.

Under certain circumstances the act confers upon the collector the power to select a discreet and experienced merchant to associate with one of the general appraisers to perform certain prescribed duties. That power by the act is given to the collector and to no one else. It has occurred to me, from the appointment in this case, that there might be some difficulty, because the appointment

36 does not seem to have been made by the collector himself, but by a special deputy collector. If there is anything in any of the acts of Congress which places the deputy so far in the place of the collector and confers upon him all the authority of the collector that, of course, would make his acts just as valid as the acts of the collector himself; but, in the absence of any act of Congress, and my attention has not been called to any, and there has been no proof on the subject, which authorizes the special deputy collector to take the place of the collector, I have doubts as to the validity of this appointment. The act of Congress seems to have confided this duty to the collector, and to the collector alone. It does not fall within the category of the ordinary administrative or ministerial functions of a principal which a deputy is authorized to

perform. The collector is to select a discreet merchant possessing certain other qualifications named in the act, and the presumption therefore would be that the collector himself is the person intended by the act of Congress to exercise this discretion—the highest discretion he is called upon to exercise; and, as the duties to be performed by this merchant appraiser are of a semi-judicial character, so also are the duties to be performed by the collector, and Congress confided to the collector the performance of this duty as a sort of judge; but I do not intend to hold this appointment as invalid for that reason. I do not know all the circumstances. Of course,
37 the collector would have a right to show that he approved of this appointment or was present at the time it was made or actually made it.

Now, as to the action of the collector and the effect of the finding of the appraisers it is objected, first, that the person selected by him is not the kind of person to whom his choice was limited by the act of Congress; that he has not the knowledge of the market value of the importation directed by the act of Congress.

It is to be observed that the appointment of this appraiser is to be made by the collector. He, and he alone, is authorized to make the selection. Nobody else has a right to participate in the selection or interfere; to the collector exclusively the act of Congress confides this selection. Had the importer any right to have any knowledge of the person appointed? I do not see that he had. I repeat, it was the business of the collector alone to make this selection, and no one had any right to object to it. The importer had no right to make any protest, then, before the action of this tribunal. He had no right to make any protest against the appointee by the collector. The provisions of the act of Congress are simply directory, and directory to the collector. It is presumed, of course, that the collector will comply with the requirements of the act of Congress; but that is not a question subject to revision in any court where the
38 importer seeks to recover what he claims to be an erroneous imposition of duties. I think, therefore, evidence tending simply to show that the person selected by the collector had not the requisite knowledge—the familiar knowledge—of the subject-matter of the importation to enable him to discharge his duties satisfactorily cannot be regarded as sufficient ground for assaulting the action of the collector.

All the other objections stated here have reference to the mode of procedure before the appraisers and the result of their act. Can the valuation be assailed? I do not see how it can. The positive reading of the act of Congress is that the decision of the appraisers shall be final. I regard the question as substantially decided by the decision of the Supreme Court in 110 U. S. Reports. The question there was not exactly similar to this, yet the court ruled that all objections as to the irregularity of the proceedings before the appraisers, whether their decision was sound or not, were excluded by the terms of the act of Congress, and that nothing but what may fairly tend to show that the whole course of finding of the appraisers was void is competent to assail it in a court of law. It

must be borne in mind that this is not an appeal from the decision of the appraisers, and that the law gives a court no power of revision over their proceedings and their determination. What they
39 decide is made by the act of Congress final, and although it may seem to be an arbitrary proceeding and is an arbitrary proceeding, yet it may be a necessary enactment, and if Congress had the power to make it we are bound by it and we cannot correct the character of the enactment by the usurpation of power on our part.

So in the whole aspect of this question I am of the opinion that the evidence offered, not tending to prove anything that would vitiate and avoid this finding of the appraisers, is by fair interpretation of the act of Congress inadmissible, as tending only to show error on the part of the appraisers, and their decision cannot be assailed on any such ground. The objections must, therefore, be sustained.

To the foregoing ruling and to the exclusions of testimony as offered by the plaintiffs and to each and every of said exclusions under the offers hereinbefore set forth plaintiffs' counsel severally and separately excepted, which several and separate exceptions to each and every part of the offers made, the questions and papers excluded, were severally and separately allowed by the court.

The plaintiffs then offered in evidence the Civil Service Classification of the Treasury Department relating to customs that was officially made pursuant to chapter twenty-seven, section six, of the act of Congress, entitled "An act to regulate and improve the
40 civil service of the United States," approved January 16th, 1883. This classification, as far as was claimed to have any pertinency to the case at bar, is as follows:

Classification of Employees at the Civil Service Customs Ports.

Class A. All persons not employed merely as laborers or workmen. receiving a compensation amounting to nine hundred dollars or more, but less than twelve hundred dollars per annum.

Class 1. All persons receiving a compensation amounting to twelve hundred dollars or more, but less than fourteen hundred dollars per annum.

Class 2. All persons receiving a compensation amounting to fourteen hundred dollars or more, but less than sixteen hundred dollars per annum.

Class 3. All persons receiving a compensation amounting to sixteen hundred dollars or more, but less than eighteen hundred dollars per annum.

Class 4. All persons receiving a compensation amounting to eighteen hundred dollars or more, but not including any officers confirmed by the Senate.

41 In connection with the offer of this classification plaintiffs offered to prove that William F. Reed, the appointee or officer hereinbefore mentioned, did not pass any civil service examination

prior to his appointment, and that the said appointment was not made pursuant to said statute.

The foregoing offer and any testimony thereunder, being objected to by the counsel for the defendant, was overruled by the court; to which ruling plaintiffs' counsel duly excepted, and the exception was allowed by the court.

Here the plaintiffs rested their case. Whereupon, to sustain the issues on the part of the defendant, testimony was adduced tending to show as follows:

WILLIAM F. REED, the above-named witness, examined as a witness on behalf of the defendant, was asked and testified as follows:

By DEFENDANT'S COUNSEL:

Q. You stated yesterday that when acting as appraiser in the re-appraisement you saw samples?

A. I did say so; yes, sir.

Q. Who produced the samples before you?

Testimony under this question was objected to by the plaintiffs' counsel as immaterial, irrelevant, and incompetent, and as not tending to contradict the testimony delivered during plaintiffs'
42 case to the effect that the original packages designated for examination and sent to the public stores for that purpose were not in fact examined; which objection was overruled; to this ruling plaintiffs' counsel duly excepted, and the exception was allowed.

A. The samples were produced by Mr. Fisher, the local appraiser or examiner, and another set of samples was produced by Mr. Mustin, the plaintiff; there were two sets of samples.

Q. Were the samples produced by Mr. Mustin, the plaintiff, and that from the appraiser's office of the same character?

The testimony under this question was objected to by plaintiffs as immaterial, irrelevant, and incompetent, because the law required that the merchant appraiser should make an examination of the original packages themselves, and that, although the appraising officers may have had before them twenty samples from the packages, that fact did not dispense with the legal necessity of making a physical examination of at least one package coming to the public store; and it was also further objected that the answer to this question involved a conclusion in the witness' mind touching the character of the goods, and that no foundation for that had been laid by which the jury could test the answer of the witness or make the comparison called for, the samples not yet having been identified; which objection was overruled; to this ruling plaintiffs' counsel duly excepted, and the exception was allowed by the court.

43 A. Samples were produced by Mr. Fisher, the examiner who examined the original packages, and were identified by him as coming from the original packages; this was in the presence of the plaintiff; there was no perceptible difference, as far as we could perceive, between the two sets of samples.

On cross-examination by plaintiffs' counsel witness testified:

Q. Your report states that you have examined five cases of worsted yarns. I call your attention to that and call your attention to the circumstance that there were five packages upon the entry, and ask you whether you are aware of the fact that out of those five packages upon the entry three were designated by the collector to be sent to the public stores for examination by the appraisers?

A. I am not aware of the fact now.

Q. You do not mean by any testimony you have to-day delivered to change your testimony as already delivered, do you—that you did not see either of these three packages?

A. Well, upon consideration, if you will allow me to answer that question at some length.

Q. Just answer yes or no, and I will give you an opportunity to explain afterwards.

A. If you ask me to take back my testimony you ought to give me an opportunity to explain why.

Q. Do you wish to change or modify your testimony?

A. I wish to modify my answers to the previous questions.

44 Q. I understood you yesterday to say that you did not see the packages yourself; that you acted on the samples and on the evidence submitted. Was that true?

A. It was true as to my recollection of the circumstances at the time you asked the question.

Q. Has anything occurred since that time to refresh your recollection in that respect?

A. Nothing, except my own effort to remember what occurred.

Q. As the results of your effort to remember what occurred do you remember to have seen any of the original packages of these three?

A. I do not positively remember.

Q. So that in that respect you have no desire to change the testimony that you have delivered touching the seeing of the original packages?

A. In that respect I have a desire to modify my testimony.

Q. Is it true that you did not see the original packages?

A. On that point I am not positive.

Q. I asked you yesterday, "Do you remember which cases you saw?" to which you replied, as I understood you, that you could not remember. Then I asked, "Do you remember which package?" to which I undertood you to say, No, sir; not at this time; that you kept no record of that. Then I asked you, "You acted on the samples alone, did you not?" to which you replied, "We acted on the samples and on the evidence submitted." I then asked you, "You did not see the packages yourself?" to which you replied, "No, sir." I now repeat that last question and ask you, did you see the packages yourself?

The COURT: The witness has said twice this morning that

45 he is not positive in his recollection about that.

A. I should like to explain why I am not positive. I am not positive because my usual custom in such cases was to examine

the packages unless a waiver was filed at the time or it was generally admitted by all parties concerned that the samples were sufficient; if there was any question raised at the time as to the sufficiency of the samples I must have examined the packages. This occurred some eight or nine months ago, and my memory is not particularly clear; that is the point which causes a doubt upon my answer yesterday.

Q. That is the explanation you wish to make?

A. Yes, sir; that is the explanation I wish to make.

Q. Do you mean that I should understand that as there was no question, as you now recollect, concerning the samples, raised at the time of this appraisement, you did not examine the original packages?

A. I do not say that; I say I am not clear whether I examined them or not.

Q. But, according to your usual custom in such cases, when there was no question raised about the same sample you would not examine the original packages?

A. No, sir; excuse me, that is not what I mean.

Q. What do you mean?

A. I mean that where it was admitted by the importer that there was no objection to the samples being examined, and the examination of the goods themselves was unnecessary, such examinations were not made and a waiver of such examination generally
46 taken, and that if that course was not pursued with this examination, then the packages must have been examined by Mr. Heyl and myself.

Q. And if that course were pursued you did not examine the packages?

A. If that course was pursued we did not examine.

Q. Have you any recollection whatever as to whether or no there was anything said by Mr. Mustin or in his presence about the samples coming from any particular cases?

A. I have only a general recollection of the case.

Q. Is it not your best recollection that upon that special topic of the samples coming from particular cases nothing in fact was said by anybody?

A. I can believe that to be the case.

Q. Have you any recollection on that subject which enables you definitely to state to the jury that anything was said touching the particular packages from which samples were taken?

A. My only guide in the case is the usual method that had always been proceeded upon by Mr. Heyl and myself.

Q. That is not answering my question.

A. I know, but I cannot answer it in any other way.

Q. That is the best answer you can give to that question?

A. The best answer I can give to that question.

Q. Do you know whether Mr. Mustin had any means of knowing from which packages the samples were taken which Mr. Fisher produced?

A. My impression is that Mr. Fisher's samples were tagged with

the numbers of the packages upon them from which they were taken and Mr. Mustin had every facility to see them.

Q. How do you know that?

A. I was present when the samples were brought in and Mr. Mustin had full access to them.

Q. How did he know whether they represented the balance of the packages or not?

A. He had an opportunity to examine them to his full extent.

Q. Do you not know that the packages were in the public stores and that the importer could not see them?

A. I do not know that the importer has ever been denied that privilege.

Q. I call your attention to two of the regulations put in evidence: "Appraisers must rigidly exclude unauthorized persons from the rooms where goods are awaiting or are under examination for appraisement and forbid their subordinates to hold communication with interested persons concerning goods under appraisement." What I want to know of you is whether you know of any opportunity at all or have personal knowledge of any opportunity at all that Mr. Mustin had to be present when samples were taken by Mr. Fisher from these three packages or any of them?

A. I do not know of any means that Mr. Mustin had of being present.

Q. Do you know whether or not all of the goods of those three packages designated for examination were identical?

A. I could only tell that by referring to the invoice now.

Q. You had no other means of knowing at that time whether all of the goods in the three packages were identical with the samples produced before you?

A. I had no means of knowing whether the samples were identical, except the admission of the parties concerned.

47 Q. (Invoice shown witness.) You had this invoice before you once?

A. Yes, sir.

Q. And you are familiar with it?

A. I was at the time.

Q. Referring to this invoice can you state which of the items are the items of which you saw any sample?

(No answer.)

Q. Tell the jury what Mr. Mustin said about samples, if anything.

A. The recollection that I have of the circumstance is that Mr. Mustin brought the samples in his hand and laid them on the table before us.

Q. How many samples did he bring?

A. I am not competent to answer that question.

Q. How many samples did Mr. Fisher bring?

A. I am not competent to answer that question now.

Q. Which particular case did Mr. Mustin bring his samples from?

A. I cannot answer that.

Q. Did Mr. Mustin say anything about what cases his samples were brought from?

A. Mr. Mustin said a great many things, but I cannot remember what he did say.

Q. About what particular cases he brought his samples from?

A. I have no recollection of what Mr. Mustin said in reference to it.

Q. Did Mr. Fisher, in Mr. Mustin's presence, say he had brought samples from all the three cases?

A. Mr. Fisher produced samples and designated them as the samples of the goods in question; further than that my memory will not serve me.

Q. To the best of your recollection, that is the substance of all he said?

A. That is the substance.

Q. Do you remember how many samples Mr. Fisher produced?

A. I have already answered that question, I believe.

Q. You could not tell?

A. We were then aware of the fact that they were invoiced.

Q. At different prices?

A. When the samples were produced?

Q. Yes, sir.

A. I had not had an opportunity to see the case then.

Q. Then you are not aware of that fact?

Objected to as not cross-examination. Objection sustained. Exception by plaintiffs' counsel.

Q. Could you identify those goods to-day if you saw them?

Which question was objected to by the defendant's counsel and the objection sustained by the court; to which ruling counsel for plaintiffs duly excepted, and exception — allowed.

Q. Are you speaking of the occurrences of August 30th?

A. I am speaking of the occurrences of the second day, which, I believe, was August 31st.

48 Q. Was anything said about samples on August 30th?

A. I think the samples were produced on both days.

Q. Was anything said about samples on August 30th?

A. I cannot remember what was said now.

Q. Was there anything said at all on August 30th about samples?

A. If the samples were produced necessarily something must have been said about them; whatever was said was said on either both days or one of the days.

Q. Will you not kindly tell the jury your best recollection whether anything was said about samples at all the first day you came together?

A. I am endeavoring to tell them my best recollection.

Q. State whether anything was said about samples at all on the first day you came together.

A. At this late period it is impossible for me to remember the difference between the two days.

Q. Do you remember Mr. Hempstead being there?

A. I remember seeing Hempstead there.

Q. Did he have any samples?

A. I cannot remember.

Q. Do you remember his saying anything about samples on the 30th of August?

A. I cannot.

Q. Do you remember Mr. Mustin saying anything on that day?

A. I cannot remember whether the remarks were made there on the 30th or the 31st.

Q. Who else was there the day that Mr. Mustin and Fisher were first present; was there a stenographer there?

A. My recollection is that the stenographer was not called in until Mr. Mustin made the objections to the tribunal.

Q. Then at the time of this occurrence about samples your best recollection is that there was no stenographer present taking notes?

A. My present recollection is that the stenographer was not present when the samples were first produced.

Q. Do you remember who else except Mr. Heyl, Mr. Fisher, Mr. Hempstead, and Mr. Mustin and yourself were present at the time the samples were produced?

A. I cannot speak positively as to that particular time.

Q. Was there any debate at all between Mr. Fisher and Mr. Mustin about the samples?

A. If there was it was not of sufficient importance to impress itself on my mind.

Q. You do not recollect any?

A. I do not.

Q. On either day?

A. On either day.

Q. Do you remember the circumstance that a stenographer was called in before anything took place at all at the first hearing before your board?

A. My recollection is that the stenographer was not called in until after the proceedings had progressed on the second day.

Q. To the best of your recollection, then, the stenographer was not called in on the first day?

A. To the best of my recollection, yes, sir.

Q. To the best of your recollection was the stenographer there at the beginning of the occurrences of the second day?

A. I think not.

Q. By these circumstances are you able to say whether the conversation about samples, to which you have alluded, occurred on the first or on the second day?

A. I think I have answered that question fully; I cannot answer any more definitely than I have already answered.

49 At this stage of the cross-examination plaintiffs' counsel offered in evidence the identical samples that were before Mr. Read at that time for the purpose of testing the testimony of the witness as already delivered, that they were fair samples of the goods he appraised.

To the admission in evidence of these samples defendant's counsel objected, and the objection was sustained by the court; to this ruling plaintiffs' counsel duly excepted, and the exception was allowed by the court.

Defendant also called as a witness HENRY A. FISHER, who, being duly sworn and examined by defendant's counsel, testified as follows:

My official position is United States examiner; I am connected with the appraiser's office and have been for eleven years; in this invoice of Mr. Mustin's there were five packages, of which three were designated for examination; I took samples from all of these five packages; I took them for our own uses at the time; afterwards I took them to the appraisers in the reappraisement when the reappraisement came up.

By the COURT:

Q. Are those the samples referred to by Mr. Read in his testimony?

A. Partly; there were two sets of samples produced, one by the importer and one by myself; the samples referred to by Mr.
50 Read in his testimony were the samples I produced.

Being cross-examined, the witness said:

Mr. Mustin had a set of samples, too; he was not present when I drew my samples out. The numbers on the bales were 2710, 2712, 2713; out of 2710 I took one sample; out of 2712 I could not tell precisely whether it was one or two samples; out of 2713 I took three, perhaps four. I had five or six samples in all—that is, in my set; I am only testifying as to my set.

Q. Is it not a little unusual out of an invoice of five packages to have three designated for examination?

A. No, sir.

Q. When the goods were all alike?

A. They were not all alike.

Redirect:

—. Did you take samples there of all the different kinds in that importation?

A. I did.

Recross:

Q. Do you mean to say that the goods were all alike?

A. No, sir.

LEWIS HEYL, a witness called on behalf of the defendant, testified as follows:

My official position is United States general appraiser and has been for almost ten years.

Q. Do you remember an appraisement made by Mr. Read
51 and yourself of this importation of worsted yarns?

A. Well, I remember that such an appraisement was held.

Q. I wish to know whether you, to the best of your belief, saw or

examined the original packages which were the subject of appraisement.

A. My impression is that we did see the original package—that is my belief; I am almost certain of it.

Being cross-examined, he said:

Q. Who is "we?"

A. Mr. Read, the merchant appraiser.

Q. What day was that?

A. I cannot say, if we made the appraisement as I suppose we did, whether we made it upon the first day or upon the second.

Q. You say you suppose you did; you do not mean to testify positively that you did, do you?

A. I mean to say just what I did say—that my impression is that we did make the examination. I can give you reasons if you wish them.

Q. Do you testify as positively for Mr. Read as you do for yourself?

A. Yes, sir; the examination was made by both of us.

Q. If it was made at all it was made by both of you?

A. Yes, sir.

Q. You would not testify positively that you made one yourself?

A. I stated before that my impression—my best recollection—is that we made an examination. If you wish to know my reasons I can give them to you.

Q. Did you have any communication from the collector at all on the 30th of August about this invoice?

A. Yes, sir; I had a communication.

Q. I mean before this invoice came before you.

A. The invoices are usually sent with the communication from the collector announcing to me that there is a reappraisement to be held; they usually send the papers with it. That is the only communication I had from them.

At this point defendant rested.

Plaintiffs' counsel then moved as follows:

The evidence being closed, the plaintiffs ask the court to direct a verdict for the plaintiffs on the ground that section 2930, under which this alleged reappraisement was had, is unconstitutional, and that the merchant appraiser, Mr. W. F. Read, who assumed to act with Mr. Heyl, the general appraiser, had no lawful authority to act as appraiser; that his appointment was unlawful and void, first,
52 because the collector had no right to appoint; and, second, that the special duty collector had no right to appoint.

The COURT: So far as the first part of the request is concerned, I will dispose of that now. It is refused. As to the validity of the appointment of the appraiser by the deputy collector I will for the present instruct the jury that he had such authority, but reserve the question for future consideration.

To the refusal of the court to direct a verdict for the plaintiffs on all or any of the grounds above stated plaintiffs' counsel duly excepted, and the exception was allowed by the court.

At this point defendant obtained permission of the court to produce further evidence as to the validity of the appointment of Mr. Read, so that the reservation of that question might possibly be obviated. Thereupon the court produced as a witness—

JOHN CADWALADER, who, being duly sworn and examined by defendant's counsel, testified as follows:

I am collector of the port of Philadelphia, and was in 1886.

Q. Do you remember the fact of the appointment of Mr. Read as appraiser in this case?

To this question plaintiffs' counsel objected on the ground that as everything touching the matter was in writing parol testimony could not be received to explain, modify, or contradict it; which objection being overruled by the court plaintiffs' counsel duly excepted, and the exception was allowed.

53 A. Yes, sir; very distinctly.

Q. Will you state who made that appointment of Mr. Read?

To which question plaintiffs' counsel further objected, the appointment being already in evidence and in writing; which objection was overruled; and to this ruling plaintiffs' counsel duly excepted, and the exception was allowed by the court.

A. If the court will allow me I think I can recall facts to the court and jury which will explain the whole matter. As stated by the first witness examined by Mr. Tremaine, this reappraisement was asked for in July, and at the request of the parties here was adjourned until the end of August; I recall that fact; I think Mr. Hempstead testified to that fact. I was requested to name a merchant appraiser on the 9th of July, when I was here attending to my duties, and names were submitted to me for selection. I selected Mr. Read. At the time of the hearing, the day before or day but one before, I had not returned from my vacation, and the designation was therefore carried out by the special deputy, Mr. Jones, who administered the oath upon my previous appointment, which had been made far back in July. I returned on the 30th day of August, the day on which the first meeting occurred, when some reference was made to it, and I, under my own hand, and I think the paper is here in court, designated Mr. Read by letter to act in this case.

Q. Is that the letter?

A. That is the letter and that is my signature to that letter.

Defendant's counsel offered this letter just identified in evidence; plaintiffs' counsel objected and moved to strike out the testimony already delivered by this witness touching the paper just offered on the ground that the paper is not an appointment, but merely the announcement of a session, and does not tend to explain, con-

54 tradict, or modify evidence already given and is not compe-

tent to be received for that purpose; and plaintiffs' counsel further objected to the paper as immaterial, irrelevant, and incompetent; all of which objections were overruled; to which ruling plaintiffs' counsel duly and severally excepted, and the exception was allowed by the court.

The paper thus received in evidence against said objections was as follows:

"CUSTOM-HOUSE, PHILADELPHIA, PA.,
"COLLECTOR'S OFFICE, *August 30th*, 1886.

"Lewis Heyl, Esqr., U. S. gen'l appraiser.

"DEAR SIR: The merchant appraisement of a lot of worsted yarn, imported by Mess. T. J. Mustin & Co., per 'Werra,' intended to be held to-day, will be held to-morrow, the 31st instant, at 11 o'clock a. m., with Mr. W. F. Read as merchant appraiser.

"Respectfully, JOHN CADWALADER, *Collector*;"

Q. Did you give Mr. Jones any instructions as to who was to be appointed?

To this question plaintiffs' counsel duly objected as incompetent, immaterial, and irrelevant; which objection was overruled, and plaintiffs' counsel duly excepted, and the exception was allowed by the court.

A. I made the selection, and instructed Mr. Jones, during my official vacation, to make that appointment, or, to carry out
55 my appointment, to notify Mr. Read; I recollect the case very distinctly.

On cross-examination by plaintiffs' counsel this witness testified:

I was in the city August 30th, performing my duties on that day as collector of the port of Philadelphia; I think I arrived after twelve o'clock; I signed on that day the majority of the official papers; I certainly did sign all the official papers that went to Washington; I was in my office after twelve o'clock or earlier, arriving on the morning train from New York, and attended to the regular business on that day.

Q. Between July 9th and August 30th where were you; when did you leave town?

A. My vacation was nominal; I think I left about August, and I was backward and forward; I was here in July; I might possibly have been away a day.

Q. Is there any record of your selection of Mr. Read on July 9th?

A. I do not know what you call a record; there is a letter from the appraiser suggesting Mr. Read's name addressed to me on that date.

Q. On what day was Mr. Read first notified, if you know, pursuant to that direction?

A. I only assume that from the date of the paper. Owing to the adjournment up to the end of August, upon their own request, I think it was probably the 28th of August, just prior to my return.

Q. That is to say, that it — the earliest day that you think any notice was sent to him?

A. I have not looked into that fact; I will not state positively; he may have heard some intimation of it prior; I do not know.

Q. You do not state positively that he had any official notice of this appointment prior to August 30th, the day he took the oath?

A. No; I only state that I made the selection; notifying him is a matter of form.

Q. You do not mean to say positively that Mr. Read had any notification of this appointment prior to August 30th, the day that he took the oath?

56 A. My habit is to select these merchant appraisers with great care; I always try to see them and ascertain their knowledge of the subject on which they are to act, and I think it is probable I saw Mr. Read on this very subject; that is my belief and impression, that I had a conversation with Mr. Read on this very subject as to his qualification.

Q. But you do not know of any official notice that Mr. Read had prior to the day he took the oath, on the 30th of August?

A. I do not know of any. If there is any in writing I would recognize it, of course.

Q. Do you mean to say you had a conversation with Mr. Read about this case?

A. Not the case. You asked me if he had received a notice, and I said that I thought it probable that I might have seen Mr. Read with a view of ascertaining his qualifications to act upon this particular question.

Q. Did you have any conversation with Mr. Read about this appointment?

A. I cannot remember with distinctness whether I spoke to him actually about this appointment or not.

Q. Did you mention this importation?

A. As I say, it is only a general recollection of an inquiry as to his competency to act in the case if I had a conversation. I would not say positively that I had.

Q. Do you mean to testify that you had a conversation with Mr. Read about this particular importation or only about his acting as merchant appraiser generally during this summer?

A. Oh, no; there is no such thing as acting merchant appraiser generally. I only appoint a merchant appraiser in each particular case. He never acts as a general officer. I appoint one in each particular case.

Q. Do you mean to testify that you had a conversation with him about this class of goods of this particular case? What was your conversation with Mr. Read about?

A. If I had a conversation with Mr. Read, which I do not state positively, it would be simply to ascertain his general knowledge upon the subject which would come before him in the case to which he would be appointed.

Q. Can you state correctly whether this conversation was when you came back on August 30th or before you went away?

A. It was before; it was at the time of my selection.

Q. Did you not have a conversation with him after an objection was made to him?

To this question defendant's counsel objected and the objection was sustained by the court, and plaintiffs' counsel duly excepted and the exception was allowed by the court.

Q. When did you send word to Mr. Mustin or Mr. Hempstead for him, if at all, that Mr. Read was appointed?

57 A. I do not suppose any notice was given to Mr. Mustin or Hempstead of the name of the appointee.

Q. According to the usual course of business in the collector's office, is the merchant appraiser's name known to the party prior to the time fixed for the hearing?

This question was objected to by defendant's counsel as not cross-examination; which objection was sustained by the court, and plaintiffs' counsel duly excepted.

Q. If, as you think you did, according to your present recollection you made the appointment in July, why was it that the signature to the formal appointment was not perfected until the 28th of August?

A. The formal notification to the merchant appraiser is generally sent to enable him to come up and take the requisite oath; that is done just prior to the meeting. These parties rsquested a delay, and two days before the meeting, which was to be the 30th of August, Mr. Read was notified, and he came up and took the oath. That is the whole fact of the dates and the fact of Mr. Jones swearing him.

Q. Did you designate Mr. Heyl to act upon this invoice by any writing?

A. The law does not require it. General Heyl is the general appraiser stationed at this port, and the designation is of the merchant appraiser to act in conjunction with Heyl. That is my writing (referring to the letter in evidence). I think that is the only designation of Mr. Heyl by me, except as I have stated. I made no

58 designation myself of Mr. Heyl to act upon this particular invoice. I found Mr. Heyl at Philadelphia when I went in office. I know he can be assigned to different parts of the country by the Secretary of the Treasury. I knew what the goods were that Mr. Read was to appraise when I talked with him; not the specific articles, but in a general way I did. If I appoint a merchant appraiser on worsted yarns I understand that the subject is worsted yarns, and I do not select a machinist to examine worsted yarns. I guess I would know the general subject to be examined before I would select a discreet and experienced merchant.

By a JUROR: Did Mr. Mustin object in anywise to the appointment of Mr. Read at the time of the appointment?

A. Not at the time of the appointment, but when the hearing was taking place; there has been a paper produced showing an objection to Mr. Read.

By PLAINTIFFS' COUNSEL:

Q. That was as soon as he knew of it?

A. As soon as I was authorized to give him any knowledge; I do not know whether he knew of it before.

Q. (Paper shown witness, being the letter offered in evidence and heretofore set forth and excluded by the court, the letter being dated August 30th, 1886, signed Thos. J. Mustin and Company, and heretofore set out in full in this bill of exceptions.) Is this the paper you alluded to in your testimony in answer to the juror's question?

A. Yes, sir; that is the letter I alluded to as being pro-
59 duced here; it is the letter I saw on the day on which it bears date.

Plaintiffs' counsel again offered this letter in evidence in the light of this further testimony. The paper, being objected to, was excluded by the court, and plaintiffs' counsel duly excepted and the exception was allowed.

At this point both sides rested and announced that the testimony was closed.

Plaintiffs' counsel renewed the motions and requests in form and manner as previously made, as above set forth, after the close of the defendant's testimony, when the case was first deemed to have been closed.

THE COURT: The first request is disposed of as before. In view of the evidence just given and all the other evidence I shall instruct the jury that the appointment was, in point of fact, made by the collector and that it was a good appointment.

To this ruling plaintiffs' counsel duly and severally excepted and the exceptions were severally allowed by the court in manner and form as hereinbefore stated.

Counsel then proceeded to sum up the cause in addresses to the jury.

While plaintiffs' counsel was addressing the jury he was
60 interrupted by the following application on the part of defendant's counsel, whereupon the following proceedings occurred:

DEFENDANT'S COUNSEL: May it please the court, since Mr. Reed's examination here he has been thinking about this matter and he now distinctly remembers that he did, in company with Mr. Heyl, make an examination of the packages in question which were the subject of appraisement.

PLAINTIFFS' COUNSEL: I object to reopening the case, particularly after the address to the jury has been commenced, and upon the ground that Mr. Read has been examined in chief and cross-examined upon this subject, and that it is unreasonable to recall him and reopen the case upon the application of the district attorney after a recess.

THE COURT: As the credibility of the witness is entirely for the jury, and as the witness was acting merely in an official capacity and does not appear to be interested in any way in this investigation,

to enable the jury to decide justly and intelligently the whole case upon the fullest inquiry and with all the testimony that can be produced, I am disposed to allow the defendant to recall Mr. Read and let him say now what he has to say in reference to the examination he made of the packages in question.

To this ruling plaintiffs' counsel duly excepted and the exception was allowed by the court.

Defendant's counsel then recalled the witness, WILLIAM F. READ, and asked him the following question:

Q. You were asked whether you made any examination of these packages, or any of them, and you said yesterday that you had not; that you had nothing but the samples before you. To-day you modified your answer to that question by stating that under certain facts you may have made the examination. Have you a more distinct recollection on that subject; and, if so, what is it?

To this question and any testimony thereunder plaintiffs'
61 counsel objected, and the objection was overruled by the court, and plaintiffs' counsel duly excepted.

The witness was then permitted to testify and did testify tending to show that he did recollect examining the particular bales of this importation, whereupon the witness was subjected to a protracted cross-examination, which need not be here detailed, except to state that upon that cross-examination plaintiffs argued to the jury that the witness Read did not see the bales in question, and the defendant argued to the jury that the witness, Read, did see the bales in question. Thereupon the evidence closed.

62 The court then charged the jury as follows:

GENTLEMEN OF THE JURY: This case has occupied so much time, and perhaps unwarrantably, too, and has been argued at such great length and, I may say, with such molecular minuteness, that it is imperative upon the court to compress what it has to say to you on the case into the fewest possible words. There are very few questions involved in the case, and the scope of the testimony is but limited, so that therefore it will not be necessary for me to occupy very much of your time in giving the instructions which it is my duty to give you in the case.

The plaintiff seeks to recover the difference between the duties charged and exacted from him upon a valuation fixed by a tribunal alleged not to have been properly constituted and authorized to find the fact and the valuation fixed by the plaintiff at the time of the entry of the goods. The sum is not very large, but the principles involved in the case are of some importance.

It appears that the plaintiff imported five packages of worsted yarns into the port of Philadelphia; that those packages went
63 into the store-house and were entered for the payment of duties; that the local appraiser fixed the valuation, which he, in his affidavit, stated as the cost of the goods. At the same time

the plaintiff presented his invoice, but the local appraiser, instead of adopting the figures presented by the plaintiff, fixed what he regarded as the true market value of these goods in the foreign markets; thereupon the duty was computed and charged by the collector, as the law required.

Complaint was made to the finding of this local appraiser by the importer and a reappraisement according to law demanded. By the act of Congress this reappraisement was to be made by the selection by the collector of one discreet and experienced merchant, to be associated with one of the general appraisers wherever practicable, or two discreet and experienced merchants and one general appraiser. The duty to make the selection of what is called the merchant appraiser is thus confided to the collector. The importer has no right to participate in this selection in any way. It is not required, even, that the collector shall give the importer notice; but upon notice or demand by the importer of a reappraisement the collector is to make the selection of an experienced person who, in his sole judgment, has the qualifications contemplated by the act of Congress; and when he makes that selection, if he does it in good faith and honestly, his action is not open to question by anybody. The importer
64 has no right to go to him afterwards and file a protest saying, "Why, this merchant appraiser is not satisfactory to me. He has not, in my judgment, the qualifications which the law requires, and you ought therefore to dismiss him and substitute another person for him." The law gives the importer no such right. But it is to the honest judgment of the collector that the selection of a person, who, with the general appraiser, is to constitute this tribunal, is committed.

There are but two questions in this case. In the first place, Was this tribunal properly constituted—constituted according to law? In the next place, Is its finding so objectionable that the law will regard it as if it had never been made at all? Is it so vicious by reason of anything done or omitted to be done by these appraisers that, in point of law, it is not to be regarded as a finding by them at all?

You have it in evidence that the official notification of the appointment of Mr. Read, who was the merchant appraiser selected in this case, is signed by Mr. Jones, the special deputy collector. When that was presented it did seem to me that there might be some doubt as to the right of the deputy collector to make this appointment. The act of Congress vests the power of making the appointment in the collector alone. As to whether the deputy collector was vested with such power I had some doubts.

But Mr. Cadwalader, the collector, was called as a witness
65 and testified that the appointment was actually made by him; that he exercised the judgment and discretion involved in the selection of a merchant appraiser, and that it was not exercised by Mr. Jones at all. He made the appointment, as he said, and in point of fact informed Mr. Jones of his determination, and directed him to carry out his decision by a proper notification to the merchant appraiser.

Now, gentlemen, if you believe this testimony of Mr. Cadwalader,

and I discern no reason whatever why you should doubt it, the law was complied with as to the appointment of the merchant appraiser, and this tribunal was properly constituted.

I do not deem it necessary to say anything as to whether the act of Mr. Jones would have been valid or not, because, in view of Mr. Cadwalader's testimony, it does not seem to me to be a practical question in this case. I simply say that if you believe the testimony of Mr. Cadwalader—and, I repeat, there is no reason why you should not believe it—this tribunal was lawfully constituted and had all the authority which the law gives to a tribunal for the ascertainment of the value of imported goods.

The main question is whether anything has been shown here which would justify the court and jury in holding the action of that tribunal to be void and of no effect.

66 The duty imposed upon the tribunal by law is to examine the goods which are the subject of the duty assessed and to find their true value. If that duty is properly, honestly discharged—discharged according to the essential requirements of law—the finding of those appraisers is conclusive, and it is to be accepted as the true value of the goods upon which duties are to be assessed.

Has anything been shown in this direction? Whatever errors may be alleged to have been committed by these appraisers in the course of discharging their duties which are in the mere category of irregularities—although they may have operated harshly or unjustly, if you choose, upon the importer—is not a matter for our consideration at all. The ground of objection to the finding of these appraisers must lie deeper than that. It must be of such a character as to make it imperative upon the court and jury to disregard their judgment entirely.

Now, what has been shown here which is claimed to have that effect? Why, that the appraisers did not make the examination of these goods—such an examination of these goods as the act of Congress requires. The act of Congress (as held by the Supreme Court) imposes upon the appraisers, as an essential condition to the validity of their finding, that they should open and examine and appraise one package of every invoice and one package at least of every ten packages of goods, wares, and merchandise in relation to which their

67 inquiry pertains, or that they shall, in substance and effect, comply with this direction—that is, make this examination by some equivalent means or method.

The act of Congress requires in cases of this kind that at least one package of goods imported shall be designated upon the invoice by the collector of portions of the importation to be examined; and you have the evidence here in this case that Mr. Cadwalader, as collector, did designate upon the invoice three packages for this purpose, and that those packages were taken to the public stores for such examination, as the law required. The law then requires that one of those packages at least should be opened, examined, and inspected by the persons whose duty it is to ascertain the amount of duty which shall be exacted.

In this case three packages out of the five were taken to the public store-house to be there examined by the appraisers. The law made it their duty to examine and inspect one of those packages. Now, was such an examination made? If it was not made, then, according to the decision of the Supreme Court, the appraisers failed to observe a fundamental condition of the law and their finding would not be binding; it would not be final and decisive; it would indeed be no settlement at all.

What testimony have you in relation to the performance of the duty required of these appraisers by law? Mr. Heyl, the general appraiser, testifies that, according to his best recollection, the appraisers went to the store-house where these packages were
68 and had three of them opened, and that they were examined by the appraisers. Mr. Read, upon his third appearance upon the stand, testifies with more positiveness that the appraisers did go to the place where these packages were, and that according to his recollection three of them were opened and three of them were examined.

It is claimed by the counsel for the plaintiff that this examination was not made until after the report of the appraisers was written out, and that if it was not made until afterwards it amounts to nothing, and that therefore all their finding must fall to the ground; but, gentlemen, in any aspect of the case this report was in the hands and under the control of the appraisers, and it might have been changed at any time that they saw proper to change it before it was delivered to the collector; so that, in the judgment of the court, it matters not whether the examination was made before or after the report was made out and signed by the appraisers, as it was in their possession, and as presumably they went there, and if their testimony be true they actually did so, for the purpose of making an examination to enable them to make up their final judgment upon the case, to be embodied, of course, in the written report which they were required to make to the collector.

I remark here, gentlemen, that the credibility of the evidence of these witnesses is for you; but jurors are not authorized or warranted in any case, upon mere capricious reasons, to disregard
69 the testimony of a witness. They must have some reason for it. They are not to deal thus capriciously with the characters and consciences of men. It is a very serious thing for a man to come into a court of justice and hold up his hand before God and pledge himself for the honesty of his statement; and therefore it is not proper for a jury, without some good reason, to conclude that a man has perjured himself, and that they are not to regard any statement that he makes.

If this testimony is believed what sort of examination did these men make? Does the law require them to take every hank of yarn of the package and inspect it, and if they did not do that is the jury warranted in saying that they have failed to discharge their duty? What did they direct the packages to be opened for if it was not to examine the contents? And what is the presumption, therefore, under the circumstances other than this, that they did make the

examination of the contents of that package, as they had it put in a condition to enable them to do, and as they went there, as they say, for the purpose of doing? So that it seems to me, gentlemen of the jury, although the import of the testimony is for you, it seems to me that if you believe the testimony of these witnesses, then they did make such an examination and inspection of the contents of those packages as the law requires, and therefore they fairly and honestly discharged their duty in that regard.

70 If, then, the examination contemplated by the act of Congress was made there was a compliance with the essential requirement of that act of Congress, and there is no ground upon which the appraisers' valuation is to be questioned.

But upon the other ground, did they do what was equivalent to an examination of these goods? There is evidence, and it is uncontradicted, that the appraisers had samples before them, one set produced by the assistant local appraiser and the other produced by the plaintiff himself. Now, gentlemen, if those samples are identified specifically as parts of the contents of these packages which the appraisers were required to examine; that they sufficiently indicated the kind, quality, and character of the goods contained in these packages, and that they were before the appraisers and their judgment and finding based upon an examination of these samples, there was such a substantial compliance with the directions of the statute as would make their judgment unassailable upon the ground that they had not discharged the duty which the law required of them.

Were the samples sufficient to enable the appraisers to determine what was in these packages, the kind of goods and the quality of goods in the packages? Mr. Fisher testifies that they were taken from the packages which were marked or designated by the collector to be examind by the appraisers. I think, therefore,

71 that you can have little difficulty in concluding, as testified to by Mr. Fisher, that the samples were taken out of those packages. For what purpose did Mr. Mustin produce the samples he had there? For what purpose did he bring them and lay them before the appraisers? Why was it, as samples of any other goods, or presumably and in effect a declaration by Mr. Mustin to the appraisers, "Here are samples of the goods that you are to examine, and as you may find the value of these samples, so you may find the value of the goods of which these samples are part and the value of all the goods contained in those packages." Is not that the fair import of the act of Mr. Mustin himself? And is it therefore to be said that the jury are not to consider that the samples produced by Mr. Mustin were taken out of the packages or were part of the packages in question?

If, therefore, upon all the evidence upon this subject you are satisfied that these samples fairly and sufficiently indicated the quality and character of the goods contained in the packages, then an examination of them and an identification of them is a sufficient compliance with the requirement of the act of Congress. The Supreme Court, in the case to which I have already referred, say that a literal

compliance with the requirements of the act of Congress is not essential to the validity of the finding of the appraisers, if they
72 make this examination by some equivalent and equally satisfactory method. In the case referred to, which was an importation of sugar, the appraisers did not see the sugar at all and did not make any examination of it whatever, but made their determination upon samples taken out some time before. The jury said that the samples there did not properly and fairly show the quality of the sugar; that it was so changed by time that they were not fair samples of the bulk of the sugar imported.

But in the present case, according to the testimony, samples were taken by the assistant appraiser and samples produced by the plaintiff himself as fairly showing the quality of the goods upon which these appraisers were to pass, and they, at least, were examined by these appraisers, and upon their judgment as to the value of these goods, shown by these samples, the valuation in this case was made.

In the first place, then, gentlemen, you are to inquire whether there was a properly and legally constituted tribunal to pass upon the question of the value of these goods. The law intrusts that duty to the collector. You have the testimony of the collector before you, and if you believe his testimony he did make the appointment of the member of this tribunal which he was authorized to appoint, and the tribunal was lawfully constituted.

In the next place, did the members of this tribunal discharge the duties which the law imposes upon them properly, in which
73 case the law makes their finding conclusive? From the fair import of their evidence they did go and examine the goods as the law required. To what extent they made the examination we have no evidence. But as to whether it was as thorough as the plaintiffs think it ought to have been is not the question for you to determine, or as you think it ought to have been made by them. Because you think they did not examine every portion of those three bales it is not for you to say that their finding is void. All that the law requires is that they should fairly make such full examination as they deem sufficient to enable them to decide the question submitted for their determination.

Therefore, if you find that this tribunal was lawfully constituted by the appointment of the merchant appraiser by the collector, and I have instructed you on this point whether the appointment was good, whether actually made by the collector or made by the deputy, and if you believe that the members of that tribunal substantially observed the directions and requisites of the act of Congress touching the valuation of the goods on which they were to pass, then your verdict should be for the defendant.

If, however, you believe that there has been such a departure or non-observance of the essential requirements of the act of Congress as to vitiate their finding, then it is to be considered that there was no valuation of the goods by the customs authorities in this
74 case, and your verdict should be for the plaintiffs for the difference between the amount of duty assessed and charged in this case by the collector and the amount of duty which ought to have

been imposed upon the basis of the valuation stated in the affidavit and invoice submitted to the collector at the time the goods were entered for duty.

Defendant's Point.

The defendant requests me to say to you—

"As there is no evidence which shows or tends to show fraud on the part of the appraisers or customs officers or that they did not act within the power conferred upon them by the statute their verdict should be for the defendant."

I decline so to instruct you.

Plaintiffs' Points.

"1. That to make the reappraisement valid it was necessary that the merchant appraiser, as well as the general appraiser, should examine at least one of the cases or packages of the goods of the invoice under consideration that were designated by the collector and sent to the public stores for examination for the purpose of the appraisement of the goods."

"2. That, to make the appraisement valid, it was necessary that the merchant appraiser, as well as the general appraiser, should see and examine at least one of the original cases or packages of the goods of the invoice under consideration."

These points are answered together; they are answered
75 affirmatively, with this qualification: That if the appraisers had before them samples of the goods taken from three of the packages comprised in the importation—that is the evidence of Mr. Fisher, that the samples were taken from three—and designated by the collector on the invoice for examination, and fairly and sufficiently showing the knd, quality, and character of the goods contained in these packages, the act of Congress was substantially complied with and the examination directed by it in effect made; that is substantially what I have already said.

"3. That if the jury find that either the merchant appraiser or the general appraiser did not make such an examination of the goods they must find a verdict for the plaintiffs for the full amount claimed, with interest."

That point is affirmed.

"4. That the examination of samples, even though they may have been fair samples, did not dispense with the necessity for an examination of the goods contained in at least one of the original cases or packages."

"5. If the jury find that samples only were examined by either the merchant appraiser or the general appraiser they must find a verdict for the plaintiffs for the full amount of claim, with interest."

Both these points are refused.

"6. If the jury believe that the plaintiffs were prevented from being present at the examination of their goods by the reappraisers, then the plaintiffs are entitled to recover. In that case there was an unlawful or irregular proceeding, and therefore no appraisement within the meaning of the statute."

76 I decline to give you that instruction. In the first place, there is no evidence before the jury which would warrant them in finding, in the sense in which the word is used in this point, from the import of the point, that the plaintiff was prevented from being present at any time or any stage of the proceeding. Although he was, in fact, not present, I think it was no part of the duty of the appraisers to notify him what they were going to do and ask him to be present.

You will now take the case and decide it.

Plaintiffs' counsel duly excepted to certain points of said charge, and exceptions were allowed by the court.

The court having charged as follows:

"By the act of Congress this reappraisement was to be made by the selection by the collector of one discreet and experienced merchant, to be associated with one of the general appraisers wherever practicable, or two discreet and experienced merchants and one general appraiser. The duty to make the selection of what is called the merchant appraiser is thus confided to the collector."

To this part of the charge plaintiffs' counsel duly excepted, and the exception was allowed by the court.

The court also charged:

"The importer has no right to participate in this selection in any way. It is not required even that the collector shall give the importer notice, but upon notice or demand by the importer of a reappraisement the collector is to make the selection of an experienced person who, in his sole judgment, has the qualifications contemplated by the act of Congress; and when he makes that selection, if he does it in good faith and honestly, his action is not open to question by anybody."

77 To this part of the charge plaintiffs' counsel duly excepted, and the exception was allowed by the court.

The court also charged:

"The importer has no right to go to him afterwards and file a protest, saying, 'Why, this merchant appraiser is not satisfactory to me; he has not, in my judgment, the qualifications which the law requires, and you ought, therefore, to dismiss him and substitute another person for him.' The law gives the importer no such right; But it is to the honest judgment of the collector that the selection of a person who, with the general appraiser, is to constitute this tribunal is committed."

To this part of the charge plaintiffs' counsel duly excepted, and the exception was allowed by the court.

The court also charged:

"There are but two questions in this case. In the first place, was this tribunal properly constituted—constituted according to law? In the next place, is their finding so objectionable that the law will

regard it as if it had never been made at all? Is it so vicious, by reason of anything done or omitted to be done by these appraisers, that in point of law it is not to be regarded as a finding by them at all?"

To this part of the charge plaintiffs' counsel duly excepted, and the exception was allowed by the court.

The court also charged:

"Now, gentlemen, if you believe this testimony of Mr. Cadwalader—and I discern no reason whatever why you should doubt it—the law was complied with as to the appointment of the merchant appraiser, and this tribunal was properly constituted.

"I do not deem it necessary to say anything as to whether the act of Mr. Jones would have been valid or not, because, in view of Mr. Cadwalader's testimony, it does not seem to me to be a practical question in this case. I simply say that if you believe the testimony of Mr. Cadwalader, and I repeat that there is no reason why you should not believe it, this tribunal was lawfully constituted and had all the authority which the law gives to a tribunal for the imposition of duties."

To this part of the charge plaintiffs' counsel duly excepted, and the exception was allowed by the court.

The court also charged:

"Whatever errors may be alleged to have been committed by these appraisers in the course of discharging their duties, which are in the mere category of irregularities—although they may have operated harshly or unjustly, if you choose, upon this importer—is not a matter for our consideration at all. The ground of objection to the finding of these appraisers must lie deeper than
78 that. It must be of such a character as to make it imperative upon the court and jury to disregard their judgment entirely."

To this part of the charge plaintiffs' counsel duly excepted, and the exception was allowed by the court.

The court also charged:

"It is claimed by the counsel for the plaintiffs that this examination was not made until after the report of the appraisers was written out, and that if it was not made until afterwards it amounts to nothing, and that therefore all their finding must fall to the ground; but, gentlemen, in any aspect of the case, this report was in the hands and under the control of the appraisers, and it might have been changed at any time that they saw proper to change it before it was delivered to the collector, so that, in the judgment of the court, it matters not whether the examination was made before or after the report was made out and signed by the appraisers, as it was in their possession, and as, presumably, they went there—and if their testimony be true they actually did so—for the purpose of making an examination to enable them to make up their final judg-

ment upon the case, to be embodied, of course, in the written report which they were required to make to the collector."

To this part of the charge plaintiffs' counsel duly excepted, and the exception was allowed by the court.

The court also charged:

"Because you think they did not examine every portion of those three bales it is not for you to say that their finding is void. All that the law requires is that they should fairly make such full examination as they deem sufficient to enable them to decide the question submitted for their determination."

To this part of the charge plaintiffs' counsel duly excepted, and the exception was allowed by the court.

The court also charged:

"For what purpose did Mr. Mustin produce the samples he had there? For what purpose did he bring them and lay them before the appraisers? Why was it — as samples of any other goods, or presumably and in effect a declaration by Mr. Mustin to the appraisers, 'Here are samples of the goods that you are to examine, and as you may find the value of these samples so you may find the value of the goods of which these samples are part and the value of all the goods contained in those packages?' Is not that the fair import of the act of Mr. Mustin himself; and is it therefore to be said that the jury are not to consider that the samples produced by Mr. Mustin were taken out of the packages or were part of the packages in question?"

To this part of the charge plaintiffs' counsel duly excepted, and the exception was allowed by the court.

79 Plaintiffs' counsel requested the court to instruct the jury as follows:

"1. That to make the reappraisement valid it was necessary that the merchant appraiser, as well as the general appraiser, should examine at least one of the cases or packages of the goods of the invoice under consideration that were designated by the collector and sent to the public stores for examination for the purpose of the appraisement of the goods."

To the refusal of the court to instruct in the language of this request plaintiffs' counsel duly excepted.

"2. That to make the reappraisement valid it was necessary that the merchant appraiser, as well as the general appraiser, should see and examine at least one of the original cases or packages of the goods of the invoice under consideration."

To the refusal of the court to instruct in the language of this request plaintiffs' counsel duly excepted.

The response made by the court to the foregoing requests, numbered 1 and 2, was as follows:

"These points are answered together; they are answered affirma-

tively, with this qualification: That if the appraisers had before them samples of the goods taken from three of the packages comprised in the importation—that is, the evidence of Mr. Fisher, that the samples were taken from three—and designated by the collector on the invoice for examination, and fairly and sufficiently showing the kind, quality, and character of the goods contained in these packages, the act of Congress was substantially complied with and the examination directed by it in effect made; that is substantially what I have already said."

To the refusal of the court to charge in the language of the foregoing points, numbered 1 and 2, and to the qualification or modification thereof, as above answered and stated by the court, plaintiffs' counsel duly excepted, and the exception was allowed by the court.

Plaintiffs' counsel further requested the court to charge as follows:

"That the examination of samples, even though they may have been fair samples, did not dispense with the necessity for an examination of the goods contained in at least one of the original cases or packages."

80 To the refusal of the court to charge as so requested plaintiffs' counsel duly excepted, and the exception was allowed by the court.

Plaintiffs' counsel also requested the court to charge as follows:

"If the jury find that samples only were examined by either the merchant appraiser or the general appraiser they must find a verdict for the plaintiff for the full amount of claim, with interest."

To the refusal of the court to charge as so requested plaintiffs' counsel duly excepted, and the exception was allowed by the court.

Plaintiffs' counsel also requested the court to charge as follows:

"If the jury believe that the plaintiffs were prevented from being present at the examination of their goods by the reappraisers, then the plaintiffs are entitled to recover. In that case there was an unlawful or irregular proceeding, and therefore no appraisement within the meaning of the statute."

To the refusal of the court to charge as so requested plaintiffs' counsel duly excepted, and the exception was allowed by the court.

In declining to charge as last above requested the court responded:

"I decline to give you that instruction. In the first place, there is no evidence before the jury which would warrant them in finding, in the sense in which the word is used in this point from the import of the point, that the plaintiff was prevented from being present at any time or at any stage of the proceeding. Although he was, in fact, not present, I think it was no part of the duty of the appraisers to notify him what they were going to do and ask him to be present.'

To the refusal of the court to charge in the language of the said request and to the charge as last above quoted, and particularly to the instruction, "I think it was no part of the duty of the appraisers to notify plaintiffs what they were going to do, * * *" plaintiffs' counsel duly excepted.

81 Plaintiffs' counsel further excepted to the refusal of the court to direct, on plaintiffs' motion, a verdict for the plaintiffs, and the exception was allowed by the court.

Inasmuch as none of said exceptions so offered and made to the rulings, instructions, and decisions of the court as above set forth do appear upon the judgment record in said cause, therefore, on the prayer of the said plaintiffs, by their counsel, said judge has hereby allowed the said several exceptions and has signed this bill of exceptions as and for the 7th day of April, 1887, the day of the trial and verdict as aforesaid, and directed the same to be filed as of said date.

W. McKENNAN,
Cir. Judge.

Exhibits referred to as incorporated at p. 9. of this record.

82 CHAPTER III.

Appraisement of Merchandise.

Mode of procedure.

ART. 447. At ports where appraisers are appointed in pursuance of law appraisement will be made by them. R. S., 2902.

Where there are no United States appraisers appraisement will be made by the collector and naval officer or, where there is no naval officer, by the collector. Their return as to the value of the merchandise is final and conclusive, unless the importer requests a reappraisement within twenty-four hours. See reappraisements.

ART. 448. The collector will designate on the invoice at least one package of every invoice and one package at least of every ten packages of imported merchandise and a greater number should it be deemed necessary by himself or the naval officer or either of the appraisers, and order the same to the public store to be opened, examined, and appraised. This examination can in no case be dispensed with. R. S., 2901. As to the port of New York see R. S., 2939.

ART. 449. The collector, having designated on the invoice the packages for examination and appraisement and marked distinctly thereon the rate at which duties have been assessed on the several articles therein specified, will in every case transmit the invoice by an official messenger to the appraisers and order the packages so designated to the public store for such examination and appraisement.

83 If the articles are bulky he will direct their examination on the wharf or other safe and suitable place to be designated by him for that purpose. 10 Wallace, 449.

If the merchandise be such as by commercial usage is bought and sold by samples, or where by such usage the character and quality of the merchandise are so determined, the appraisement may in such

cases be made by samples, due care being taken that they are properly and fairly selected from the packages designated in the invoice by the collector and identified as such. 1 Clifford, 492.

Matches will be examined at the appraiser's store. S., 6081.

ART. 450. In no case can the examination of imported merchandise be made at the residence of the importer or at any other place not contemplated by the foregoing article unless by special permission from the collector of customs, in which the appraiser concurs. Such permission will be given by the collector in person only or, in his absence, by his special deputy, and not otherwise than in exceptional and extraordinary cases, as, for example, when articles are of a very fragile character or are imported for the personal use of the importer and not as merchandise, or when they might be exposed to injury by being opened, examined, and repacked at the appraiser's store.

Before granting such permission the collector will require the importer to deposit with him an amount sufficent to cover the expense, if any, that may be incurred in the examination of
84 the merchandise at the place designated. Circular, December 15, 1881.

ART. 451. A thorough examination must then be made under the direction of the appraisers, in connection with the specifications and description in the invoice, to ascertain whether the merchandise corresponds in quantity and description with the invoice and whether the value declared on the entry corresponds with the requirements of law.

ART. 452. If it be found on such examination that the merchandise in the package varies in quantity or in character from the specifications in the invoice or that the merchandise is invoiced below its foreign market value it is the duty of the appraisers to notify the collector in writing of the facts, and, if necessary, request that the remaining packages contained in the invoice be submitted for their examination in detail.

If such remaining packages have been delivered to the importer under bond the collector will forthwith make requisition upon him in the following form:

Form No. 100.

Request to importer to deliver goods to storekeeper at appraiser's store.

CUSTOM-HOUSE, ——,
COLLECTOR'S OFFICE, ——, 18—.

SIR: You are hereby required to deliver to the storekeeper at the United States appraiser's office, No. — —— street, the following-described merchandise, viz: ——, imported by you in the ——, —— ——, master, from ——, and entered at this office on the — day of ——, 18—, in accordance with the terms of the bond executed by you on the entry of the same, under section 2899 of the Revised Statutes of the United States.

—— ——, *Collector.*

85 This requisition will be delivered personally to the importer or be left at his place of business by a messenger, who will certify the delivery and the time thereof on the copy of the requisition recorded in the collector's office.

ART. 453. If a package be found on examination to contain any article not specified in the invoice or prohibited by law the appraisers will make a special report in writing to the collector, with an expression of their opinion whether or not the omission was made or the forbidden article introduced with fraudulent intent on the part of the shipper, owner, or agent.

ART. 454. If the merchandise be found to correspond in quantity, character, and value with that described in the invoice and declared on entry, the appraisers will report accordingly to the collector in writing, duly signed by them, which report should be written on the invoice, if practicable, and, if not, on a separate paper permanently attached to the invoice.

The report or return of the appraisers must describe the character of the merchandise as nearly as practicable in the terms of the tariff, and should state for the information of the collector and naval officer under what classification, in their opinion, it falls. It should be forwarded without unnecessary delay, and not be held to await the result of applications to the Department. 8258, C.

ART. 455. The certificate of any one of the assistant appraisers at the port is to be deemed and taken to be the legal appraisement of imported merchandise required to be made by such appraisers. R. S., 2950.

86 ART. 456. If the collector shall deem any appraisement too low he has power to order a reappraisement, either by the principal appraisers or by three merchants, citizens of the United States, designated by him for the purpose, who are subject to a penalty of fifty dollars ($50) and costs for declining or neglecting to serve. R. S., 2529, 2609, 2610, and 2945; Iasigi vs. Collector, 1 Wallace, 375.

ART. 457. At ports where there are no United States appraisers the collector and naval officer, or, where there is no naval officer, the collector, must endorse on the invoice itself or on a separate paper permanently attached thereto a statement of the results of their appraisement in writing, signed by him or them. R. S., 2946 and 2950; S., 1000.

ART. 458. The revenue laws require that the examination and appraisement of imported merchandise shall take place at the first port of entry, at which port also the actual quantity must be ascertained by weighing, gauging, or measuring, as the case may be, and the amount of duties ascertained and paid or secured to be paid, except when entry is made at the first port of arrival for immediate transportation in bond without appraisement.

ART. 459. It is lawful for the appraisers or the collector and naval officer, as the case may be, to call before them and examine upon oath or affirmation any owner, importer, consignee, or other person touching any matter or thing which they may deem material in ascertaining the true market value or wholesale price of merchandise

imported, and to require the production on oath or affirma-
87 tion to the collector or to any permanent appraiser of any letters, accounts, or invoices in his possession relating to the same, for which purpose they are authorized to administer oaths or affirmations. Such persons are not entitled to compensation. S., 335.

And all testimony in writing or depositions thus taken will be filed in the collector's office, preserved for future use or reference, and transmitted to the Secretary of the Treasury whenever he may require the same.

ART. 460. In making advances on invoices the appraisers will make the addition to or advance upon the value declared on entry in the currency in which the invoice is made out in a specific sum, and not by percentage, and in the weight, gauge, or measure expressed in the invoice, but in no case will an average valuation be made.

ART. 461. All communications and papers, whether invoices, appraisement orders, damage warrants, or others, passing between the custom-house proper and appraisers, must be transmitted by an officer of the customs or an official messenger.

All persons, except officers and employees whose duties require them to have access to the places or rooms in the appraiser's department, in which merchandise is examined under the laws regulating appraisements, must be excluded therefrom.

ART. 462. The addition made by the appraisers having been first noted in the invoice and certified by them, the invoice will immediately be forwarded to the collector, who will at once give
88 notice of the advance to the importer in the following form:

Form No. 101.

Notice to importer of advance in value upon appraisement.

CUSTOM-HOUSE, ——,
COLLECTOR'S OFFICE, ——, 18—.

SIR: A lot of —— entered by you on the ——, per the ——, from ——, has been appraised in accordance with law, and the valuation exceeds by —— the amount declared as the value on entry. If you appeal from this appraisement it will be necessary to do so within twenty-four hours from the receipt hereof.

—— ——, *Collector.*

To —— ——.

Reappraisements.

ART. 463. If the importer be dissatified with the appraisement he may, if he has complied with the legal requirements, give notice of such dissatisfaction, in writing, to the collector. This notice must be given, in all cases, within twenty-four hours or before the end of the official day after the day on which the collector gave the notice prescribed in the foregoing article, and may be in the following form R. S., 2930:

Form No. 102.

Importer's notice to collector claiming reappraisement.

——— ———, 18—.

SIR: As I consider the appraisement made by the United States appraisers too high on ——— imported by ——— ——— in the ——— from ———, I have to request that the same may be reappraised, pursuant to law, with as little delay as your convenience will permit.

——— ———.

——— ———, collector of the customs.

ART. 464. The collector, on receiving such notice, will call on the local appraisers for an appraisement and special report thereof, in due form, at the same time notifying them of the appeal and requiring them to inform him whether additional samples or packages of the merchandise be necessary to secure a full compliance with the law. If such samples or packages be required or the collector deem the examination of an additional number — be expedient he will, in case the merchandise has been delivered to the importer, make requisition (Form No. 97) upon the importer to return the entire importation.

89

Report of the local appraiser.

ART. 465. The special report of the local appraiser will be in the following form and may be signed by one or more of the appraisers:

Form No. 103.

Appraisers' report.

PORT OF ———,
APPRAISERS' OFFICE, ———, 18—.

SIR: We have examined ——— imported by ——— ——— in the ——— from ———, and do hereby certify that, in our opinion, the actual market value (or wholesale price) of the said goods at the period of the exportation thereof to the United States, in the principal markets of the country from which the same were imported into the United States, was, and we do therefore appraise the same, as follows:

Marks.	Numbers.	Description of merchandise.	Value.

——— ———,
——— ———,
Appraisers.

To ——— ———, collector of the customs.

Merchant appraisers.

ART. 466. On the receipt of this report the collector will select one discreet and experienced merchant, a citizen of the United
90 States, familiar with the character and value of the goods in question, to be associated with an appraiser at large, if the attendance of such officer be practicable, to examine and appraise the same according to law. R. S., 2930.

The selection of merchant appraisers should not be confined exclusively to those connected with foreign imports, but, when the requisite knowledge exists, should be extended so as to embrace domestic manufacturers and producers and other citizens acting as merchants, although not dealing in foreign merchandise. S., 6111.

The merchant thus selected will be notified by the collector of his appointment and of the time and place of the re-examination.

The appraiser at large will be notified of the appeal, of the time fixed for reappraisement, and of the name of the merchant appraiser. The importer will be notified of the time and place, but not of the name of the merchant selected to assist in the reappraisement.

If the attendance of an appraiser at large be impracticable the collector will select an additional merchant, qualified as aforesaid, for the performance of the service.

ART. 467. The notice of the appointment of the merchant appraiser will be in the following form:

Form No. 104.

Appointment of merchant appraiser.

CUSTOM-HOUSE, ——,
COLLECTOR'S OFFICE, ——, 18—.

SIR: You are hereby appointed to appraise —— which has been entered at this port, the importer having requested a new appraisement thereof, in accordance with the provisions of the several acts of Congress providing for and regulating the appraisement of
91 imported merchandise; and you are requested to appear at ——, at — o'clock, on the —— day of ——, 18—, to appraise the said goods pursuant to law.

Before entering upon the duty indicated in the above appointment you will please call at this office to take the requisite oath.

Very respectfully, —— ——, *Collector.*

To —— ——, merchant.

ART. 468. The oath to be taken by the merchant appraiser will be in the following form:

Form No. 105.

Oath of merchant appraiser.

I, the undersigned, appointed by the collector of —— to appraise —— imported per —— from ——, the importer having requested a

new appraisement thereof, in accordance with law, do hereby solemnly swear diligently and faithfully to examine and inspect said lot of ——, and truly to report, to the best of my knowledge and belief, the actual market value or wholesale price thereof, at the period of the exportation of the same to the United States, in the principal markets of the country from which the same was imported into the United States, in conformity with the provisions of the several acts of Congress providing for and regulating the appraisement of imported merchandise.

—— ——,
Port of ——.

Sworn to and subscribed before me this —— day of ——, 18—.
—— ——, *Collector.*

Samples, &c., to be sent to reappraisers.

ART. 469. At the time fixed for reappraisement the collector will send to the appraiser at large and merchant appraiser the invoice or invoices of the merchandise to be examined and appraised; the storekeeper or other officer having charge will deliver to them the samples or packages ordered for examination, and they will proceed to examine and appraise in the manner pointed out by law.
92 The importer or his agent will be allowed to be present and to offer such explanations and statements as may be pertinent to the case.

The valuation having been determined, the appraisers will report the same to the collector.

ART. 470. In case the appraisers do not agree they will make separate reports to the collector, who will decide between them. The collector is, however, not bound by the value fixed in the report of either the merchant appraiser or the general appraiser, but will adopt such value as, upon the testimony submitted, may seem to him just, and the appraisement thus determined will be final and the duties be assessed accordingly. Appraisers may reconsider, alter, or amend their original reports, although a reappraisement has been demanded and is in progress. Circular January 9, 1879; R. S., 2608, 2930; S., 4269.

Reappraisement is final.

ART. 471. An original appraisement unappealed, as well as the decision of the merchant appraisers on appeal, is final and conclusive against the importer. Neither can be impeached except for fraud or material informality.

Importers are precluded by their appeal to merchant appraisers from afterwards alleging any informality in the proceedings of the United States appraisers on the original appraisement.

Questions of valuation only are subjects for reappraisement.

The Secretary of the Treasury has no authority to remit or
93 refund the additional duty, if any, imposed in consequence of a final appraisement in pursuance of law.

Compensation of merchant appraisers.

ART. 472. The merchant appraiser is entitled, as such, to a compensation of five dollars per diem while so employed, to be paid by the party taking the appeal. In cases, however, where such party refuses or delays to make the payment the collector is authorized, if claimed by the merchant appraiser, to advance the sum due to said merchant appraiser, such payment to be noted on the entry of the merchandise in question, and no permit thereafter will be issued for the delivery of said merchandise or any part thereof for consumption, transportation, or exportation until the collector be reimbursed by the importer for the advance so made. R. S., 2725; S., 4242; art. 429, regs. 1874.

ART. 473. In cases of reappraisement under section 2929 Revised Statutes the local appraiser may submit to the collector the names of suitable merchants, not excluding domestic manufacturers and producers and other citizens acting as merchants (S., 6111) known to be well qualified, to aid the collector in making a judicious selection; but the latter need not confine himself to the list made by the appraiser. S., 3809.

Where three merchant appraisers are appointed under section 2829 Revised Statutes they will be paid by the Government.

ART. 474. Merchants' appraisements should not assume the
94 nature of a judicial inquiry where judgment is rendered in accordance with the preponderance of testimony on either side, but should be conducted as an investigation by experts to ascertain whether the local appraiser has reported the true and proper market value of the merchandise in question. S., 2655. Application for copies of proceedings on reappraisements should be made to the general appraiser, who will exercise his discretion in regard to furnishing the same.

Delivery of goods pending reappraisement.

The following rules may be observed as regards the delivery of merchandise pending reappraisement, which may be fully and correctly represented by samples:

First. On delivery the importer shall be required to deposit a sum sufficient to cover the duties on the appraised value, together with any penal duty which may thereby accrue.

Second. The merchant appraiser and the general appraiser shall, prior to the delivery, make a formal examination of the goods sufficient to meet the demands of the law for the purposes of the reappraisement.

Third. Samples or sample packages, as in the judgment of the general appraiser may be necessary, shall be retained pending the final completion of the reappraisement.

Fourth. The certificate of the general appraiser shall be given prior to such delivery, consenting to the delivery of the goods less the retained samples.

95 Fifth. The importer shall file a stipulation binding themselves to abide the results of the appraisement, the same as if all the goods had been retained.

Sixth. No delivery under the above rules shall be permitted of goods belonging to a class which has been passed upon by a previous reappraisement, whether belonging to the same importer or to another party, and where the local appraiser has advanced the goods to the same or substantially the same sum as was reported in the case involved in the former reappraisement.

Seventh. No delivery under the above rules will be permitted in any case where the value reported by the local appraiser is greater by 20 per cent. or more than the value declared in the entry. §§ 3663 and 4459.

Dutiable value of imports.

ART. 475. It shall be the duty of the appraisers of the United States and every of them and every person who shall act as such appraiser, or of the collector and naval officer, as the case may be, by all reasonable ways and means in his or their power, to ascertain, estimate, and appraise the true and actual market value and wholesale price, any invoice or affidavit thereto to the contrary notwithstanding, of the merchandise at the time of exportation and in the principal markets of the country whence the same has been imported into the United States, and the number of such yards, parcels, or quantities, and such actual market value or wholesale
96 price of every of them, as the case may require. All such merchadise being manufactured of wool or whereof wool shall be a component part which shall be imported into the United States in an unfinished condition shall in every such appraisal be estimated to have been at the time of exportation and place whence the same was imported into the United States of as great value as if the same had been entirely finished. R. S., 2902.

ART. 476. When the duty upon any imports shall be subject to be levied upon the true market value of such imports in the principal markets of the country from whence the importation has been made or at the port of exportation the duty shall be estimated and collected upon the value on the day of actual shipment, whenever a bill of lading shall be presented showing the date of shipment and which shall be certified by a certificate of the United States consul, commercial agent, or other legally authorized deputy. R. S. 2904.

ART. 477. In all cases where merchandise subject to ad valorem duty, or on which the duties are to be levied upon the value of the square yard, and in all cases where any specific quantity or parcel of such merchandise has been imported into the United States from a country in which the same has not been manufactured or produced, the foreign value shall be appraised and estimated according to the current market value or wholesale price of similar articles at the principal markets of the country of production or manufacture at the period of the exportation of such merchandise to the United States. R. S. 2905.

97 ART. 478. When an ad valorem rate of duty is imposed on any imported merchandise, or when the duty imposed shall be regulated by or directed to be estimated or based upon the value of the square yard, or of any specified quantity or parcel of such merchandise, the collector within whose district the same shall be imported or entered shall cause the actual market value or wholesale price thereof, at the period of the exportation to the United States, in the principal markets of the country from which the same has been imported to be appraised, and such appraised value shall be consid red the value upon which duty shall be assessed. R. S. 2906.

ART. 479. The appraisers, or the collector and naval officer, as the case may be, may call before them and examine, upon oath, any owner, importer, consignee, or other person touching any matter or thing which they may deem material in ascertaining the true market value or wholesale price of any merchandise imported, and require the production, on oath, to the collector or to any permanent appraiser of any letters, accounts, or invoices in his possession relating to the same. All testimony in writing or depositions taken by virtue of this section shall be filed in the collector's office and preserved for future use or reference, to be transmitted to the Secretary of the Treasury when he shall require the same. R. S., 2922.

ART. 480. If any person so called shall neglect or refuse to attend or shall decline to answer or shall, if required, refuse to an-
98 swer in writing any interrogatories and subscribe his name to his deposition or to produce such papers when so required by an appraiser or collector and naval officer he shall be liable to a penalty of one hundred dollars; and if such person be the owner, importer, or consignee the appraisement which the appraisers or collector and naval officer, where there are no legal appraisers, may make of the merchandise shall be final and conclusive. R. S., 2923.

ART. 481. Any person who shall wilfully and corruptly swear falsely on an examination before any appraiser or collector and naval officer shall be deemed guilty of perjury; and if he is the owner, importer, or consignee the merchandise shall be forfeited. R. S., 2924.

ART. 482. Whenever, in the opinion of the Secretary of the Treasury it may be necessary in order to carry into full effect the laws for the collection of the revenue he may authorize the collector of any district into which merchandise, subject to duty, may be imported to require the owner, importer, or consignee of such merchandise to give bond, in a sum not exceeding the value of such merchandise, that he will produce or cause to be produced within a reasonable time, to be fixed by the Secretary, such proof as the Secretary may deem necessary and as is in the power of the owner, importer, or consignee to obtain, to enable the collector to ascertain the class or description of manufacture or rate of duty to which such merchandise is justly liable. R. S., 2925.

99 ART. 483. Before any merchandise which may be taken from any wreck shall be admitted to an entry the same shall be appraised; and the same proceedings shall be ordered and exe-

cuted in all cases where a reduction of duties shall be claimed on account of damage which any merchandise shall have sustained in the course of the voyage; and in all cases where the owner, importer, consignee or agent shall be dissatisfied with such appraisement he shall be entitled to the privileges of appeal as provided for in this title. R. S., 2928.

ART. 484. The Secretary of the Treasury, from time to time, shall establish such rules and regulations, not inconsistent with the laws of the United States, to secure a just, faithful, and impartial appraisal of all mercandise imported into the United States, and just and proper entries of such actual market value or wholesale price thereof, and of the square yards, parcels, or other quantities, as the case may require, and of such actual market value or wholesale price of each of them. R. S., 2949.

ART. 485. The certificate of any one of the appraisers of the dutiable value of any imported merchandise required to be appraised shall be deemed to be the appraisement of such merchandise required by law to be made by such appraisers. Where merchandise shall be entered at ports where there are no appraisers the certificate of the revenue officer to whom is committed the estimating and collection of duties of the dutiable value of any merchandise required to be appraised shall be deemed and taken to be
100 the appraisement of such merchandise required by law to be made by such officer. R. S., 2950.

Duties on charges abolished.

ART. 486. "Sections twenty-nine hundred and seven and twenty-nine hundred and eight of the Revised Statutes of the United States and section fourteen of the act entitled 'An act to amend the customs revenue laws and to repeal moieties,' approved June twenty-second, eighteen hundred and seventy-four, are hereby repealed and hereafter none of the charges imposed by said sections or any other provisions of existing law shall be estimated in ascertaining the value of goods to be imported, nor shall the value of the usual and necessary sacks, crates, boxes, or covering of any kind be estimated as part of their value in determining the amount of duties for which they are liable: Provided, That if any packages, sacks, crates, boxes, or coverings of any kind shall be of any material or form designed to evade duties thereon or designed for use otherwise than in the *bona fide* transportation of goods to the United States the same shall be subject to a duty of one hundred per centum ad valorem upon the actual value of the same." Act March 3, 1883, § 7.

Appraisement under section 7, act March 3, 1883.

ART. 487. As regards the basis on which ad valorem duties are to be estimated, the only change effected by section 7 of the act of 1883 is to exclude from such basis all costs and charges which,
101 under the law as it previously stood, were required to be added to the current or actual market value or wholesale price of

the merchandise in the principal markets of the country whence the same was imported or of the country of production or manufacture, as the case might be. Thus the current or actual market value or wholesale price in those markets, which is to be appraised, is now made the sole basis for estimating such duties. Circular No. 18, January 18, 1884.

The cost of boxes or coverings with which goods are ordinarily prepared for sale in the foreign market and in which they are usually sold and purchased there (the price paid for the goods, including the box or covering, which goes therewith to the purchaser) must be regarded as entering into or as being an element of actual market value of the goods. Section 7 of the act of 1883 does not forbid the inclusion in the dutiable value of merchandise of that which forms a constituent of its actual market value. Hence the dutiable value of goods usually prepared for sale as above and thus usually sold in the foreign market is their current or actual market value or wholesale price in such market as enhanced by the preparation thereof for sale in the manner mentioned.

The expense of the usual and customary preparation of silks, velvets, and ribbons for sale in the foreign market necessarily enters into the actual market value of those articles in that market. This being so, and the price paid for the goods in that market, including such expense, the latter is not to be estimated separately for "insertion in the dutiable value," nor is any part thereof to
102 be estimated and deducted from the dutiable value. The current or actual market value or wholesale price of the goods in the condition in which they are usually sold and purchased in the foreign market, and that alone, is required to be ascertained. Such value or price of the goods is now their dutiable value, and the addition to or deduction from the latter of costs or expenses of any kind which necessarily enter into and are included in the former is unwarranted by the existing law. (Opinion Attorney General, January 11, 1884; circular Treasury Department, January 18, 1884.)

Appraisement under section 9, act March 3, 1883.

ART. 488. If, upon the appraisal of imported goods, wares, and merchandise, it shall appear that the true and actual market value and wholesale price thereof, as provided by law, cannot be ascertained to the satisfaction of the appraiser, whether because such goods, wares, and merchandise be consigned for sale by the manufacturer abroad to his agent in the United States or for any other reason, it shall then be lawful to appraise the same by ascertaining the cost or value of the materials composing such merchandise at the time and place of manufacture, together with the expense of manufacturing, preparing, and putting up such merchandise for shipment, and in no case shall the value of such goods, wares, and merchandise be appraised at less than the total cost or value thus ascertained. Act March 3, 1883, § 9.

103 Section 9 of the act of March 3, 1883, cited above, in nowise changes or modifies the requirements of the Revised Statutes

as to the duty of manufacturers, owners, or agents in making their declarations to invoices under section 2854, Revised Statutes, or as to the verification by the oath of the owner under section 2845 as amended. Both sections require a statement that the invoice contains a true and faithful account of the merchandise at its fair market value at the time and place, when and where the same was procured or manufactured. The method adopted in section 9 should not be resorted to, except in cases where the true and actual market value and wholesale price cannot otherwise be ascertained to the satisfaction of the appraiser, a condition which can but rarely occur.

When the appraiser is compelled to adopt this mode of appraisal he may add to the items therein enumerated whatever he deems proper to make the true and actual market value, the only restriction upon his action being that "in no case shall the value of such goods, wares, and merchandise be appraised at less than the total cost or value thus ascertained."

Dutiable value in particular cases.

ART. 489. Whenever articles composed wholly or in part of wool or cotton of similar kind, but different quality, are found in the same package charged at an average price it is the duty of the appraisers to adopt the value of the best article contained in such package and so charged as the average value of the whole. R. S., 2911.

104 ART. 490. When wool of different qualities is imported in the same bale, bag, or package it shall be appraised by the appraiser to determine the rate of duty to which it shall be subjected at the average aggregate value of the contents of the bale, bag, or package, and when bales of different qualities are embraced in the same invoice at the same prices whereby the average price shall be reduced more than 10 per cent. below the value of the bale of the best quality the value of the whole shall be appraised according to the value of the bale of the best quality, and no bale, bag, or package shall be liable to a less rate of duty in consequence of being invoiced with wool of lower value. R. S., 2912.

ART. 491. When the actual market value of wool at the last place of shipment to the United States, exclusive of charges in such port, shall have been ascertained no further inquiry is necessary to ascertain the value for the purpose of determining the rate of duty to which the merchandise is liable. Circular No. 12, January 22, 1884.

ART. 492. In the appraisement of kid and all other gloves imported into the United States there shall be no discrimination in determining by appraisement the foreign market value of such goods, whether protected by trade mark or not; and in no case shall gloves so protected by trade mark be appraised at a less market value than the like goods not so protected, and no sale or pretended sale of such goods shall be held to fix the value of the same. R. S., 2913.

105 ART. 493. When the market value of imports has been fixed all merchandise of the same character and quality im-

ported from the same market at or about the same time should be valued at the same price, irrespective of the relative quantities in which such imports were purchased, subject, of course, to the condition that duty shall not be assessed upon less than the invoice value or the actual market value. R. S., 2902; S., 3719.

ART. 494. While the foreign market value of imported merchandise as ascertained and returned by the appraisers is to be taken as the dutiable value of the same, under no circumstances can the duty be assessed upon an amount less than the invoiced or entered value. R. S., 2900.

ART. 495. The entered or invoiced value spoken of in the statute prohibiting the assessment of duty on less than the entered or invoice value means the cash value, and where goods were invoiced at a certain price from which a reduction of 2 per cent. was made in the invoice for cash and the appraiser disallowed such discount, it was held that he erred. S., 3687.

ART. 496. No deduction can be made from the invoice and entered value of imported goods for the drawback which the English government allows on the exportation of such goods, such drawback not being deducted nor allowed as a discount on the original invoice. S., 2847.

ART. 497. Where the shipment is made subsequent to the
106 time of manufacture and the market value of the component materials of the goods at the time and place of manufacture differs from the market value of such materials at the place of manufacture and time of export the value of such materials at the place of export must be taken in ascertaining the proper market value. S., 5241; act March 3, 1883, § 9.

ART. 498. The dutiable value of goods bought and sold by weight subject to ad valorem duty shall not be less than the invoice value where the ascertained weight does not vary more than 2 per cent. from the invoice weight. If the ascertained weight exceeds the invoice weight by more than 2 per cent. the duty should be increased in proportion as the weight is increased above the invoice. If the ascertained weight be less by 2 per cent. than the invoice weight the regulations regarding short shipments should govern. S., 5094.

Royalty for the use of a patent is not an element of the dutiable value if no royalty has been or is to be paid by the importer. S., 5759.

Definition of term "country."

ART. 499. The term "country," as used in the law, is to be regarded as embracing all the possessions of a nation, however widely separated, which are subject to the same supreme executive and legislative authority and control.

What are to be regarded as the "principal markets" of a
107 country in any given case is for the determination of the appraiser. It is a question of fact, not of law, and the decision of the appraisers is conclusive upon the government and the importer. Stairs *vs.* Peaslee, 18 Howard, 522.

Time of exportation.

ART. 500. The "time of exportation" must be deemed and taken to be the date at which the merchandise actually leaves the foreign port for its destination in the United States, which period may ordinarily be established by the production of the clearance granted to the vessel at the foreign port and the declaration of the master, under oath, at the time of entry of the date when the vessel sailed.

ART. 501. In the absence, satisfactorily explained, of the usual proofs, showing the date of exportation from the foreign country, other evidence of that fact—such as letters of advice, entries in the vessel's log-book or journal, or testimony of witnesses—may be taken into consideration by the appraisers.

ART. 502. Merchandise from an interior country intended for exportation through the ports of another country to the United States—from Switzerland by way of Havre, for example—is considered as exported within the meaning of the law when it passes the frontier boundary of such interior country.

The wholesale price or general market value of such merchandise in the principal markets of the interior country at the date
108 when it passed the frontier for its destination in the United States will, on importation and entry, be ascertained by the appraisers with a view to the assessment of duty. Satisfactory proof of the date of exportation from such interior country must be exhibited on the entry.

ART. 434. Regs., 1874.

Importation from other than country of production.

ART. 503. Merchandise imported from one country, being the growth, production, or manufacture of another country, will be appraised at its actual value in the principal markets of the country from which immediately imported, unless it appear by the invoice, bill of lading, or other satisfactory proof that the same was, in good faith, destined for the United States at the time of the original shipment, without any contingency of diversion, in which case it will be appraised at its value in the principal markets of the country from which originally exported.

Should it happen, however, that the value in the markets of the country of immediate exportation is less than the value in the country of growth, production, or manufacture, the case will be submitted to the Secretary of the Treasury for instructions for the adjustment of the duties.

ART. 436. Regs., 1874.

Unusual coverings.

ART. 540. Envelopes designed for use otherwise than in the transportation of the goods which they contained are dutiable at
109 the ordinary rate only, if the value is separately specified in the entry. In other cases they are dutiable at the rate of 100 per centum ad valorem. Act March 3, 1883, §. 7; S., 5770.

Invoicing at an average price.

ART. 505. When merchandise of the same material or description, but of different values, is invoiced at an average price and not otherwise provided for the duty shall be assessed upon the whole invoice at the rate to which the highest valued goods in such invoice are subject. R. S., 2910.

Discounts.

ART. 506. Discounts exhibited on the invoice and according to the usual and established usage of the trade may be allowed if claimed on the entry, and also discount if claimed on the invoice and entry of goods shipped by a manufacturer, to be sold on his account, provided the oaths or affirmations are made by the manufacturer and consignee, as prescribed by existing laws: And provided further, That in both of the above cases the deduction of such discounts does not reduce the invoice value below the general market value of the goods in the principal markets of the country from which imported at the date of exportation.

110 General appraisers.

ART. 1399. It is the duty of the general appraisers of merchandise to supervise the appraisement of merchandise within their assigned jurisdictions by visiting and inspecting the several ports thereof as often as from time to time may be designated by the Secretary of the Treasury for the purpose of supervising the methods of appraisement of dutiable goods and securing uniformity in their values and classifications; to receive from the local appraisers monthly returns of the appraisements of such leading articles of import as may be prescribed; to act on appeals from the valuations of local appraisers; to assist the local appraisers by conference and advice; to keep themselves and the local appraisers informed, from the reports of consuls and Treasury agents and from other available sources, of the ruling prices of export commodities in the leading markets of the world; to meet at the port of New York in February, June, and September of each year for the purpose of comparing the results of their inquiries and the reports received from the several collection districts, and to unite in a report to the Secretary of the Treasury of any variations they may find in the dutiable values or classification for duties of imported merchandise, with such recommendations as may be deemed proper. R. S., 2608; S., 3281.

ART. 1400. The collection districts of the United States will be, from time to time, arranged into general appraisement divisions by the Secretary of the Treasury, and a general appraiser as-
111 signed to duty within each division, with no power to exercise his functions beyond the limits of his division, except when otherwise directed by the Secretary. R. S., 2608; S., 3383.

ART. 1401. For the purpose of properly and practically discharging the duties imposed upon them by law general appraisers are

authorized to call for and obtain from collectors, local appraisers, and other customs officers invoices, other documents, and information relative to the importation of goods.

ART. 1402. General appraisers, when examining the files of invoices of contemporaneous or assimilated importations in connection with an appraisement under consideration, will report to collectors and to the Secretary of the Treasury any material inequalities of valuations which may be discovered.

ART. 1403. General appraisers, when visiting the ports within their divisions, should direct their attention to questions connected with the receipt or shipment of foreign goods coastwise in unusual quantities, and ascertain and report the causes thereof, particularly as to the undue advantages afforded at any ports for such excessive coastwise transactions in foreign goods.

ART. 1404. General appraisers should be careful to abstain from expressions of opinion that may have a tendency to disqualify them from acting, with satisfaction to all parties, in cases of appeal from the valuations of local appraisers.

112 ART. 1405. General appraisers will keep a record at their ports of residence, in prescribed form, of all cases of appeal from decisions of the local appraisers, specifying those on which merchant appraisers have acted and those in which they have been joined with a general appraiser, and forwarding monthly transcripts of such records to the Secretary of the Treasury. S., 2196.

ART. 1406. In their monthly reports to the Secretary of the Treasury general appraisers will report prevailing irregularities in the modes of weighing, gauging, and measuring, and recommend such changes in the system of appraisement as their observation and experience may suggest, giving their reasons therefor in succinct form and accompanying their reports with a tabular statement exhibiting in prescribed form a comparative view of the appraisements of specified articles at the principal ports in their divisions, — reporting any neglect of officers of the customs in forwarding to them their monthly statements. S., 2196 and 3496.

ART. 1407. In cases of appeal general appraisers shall pursue their inquiry into the question of the actual character and dutiable value of the goods under re-examination in such manner as they may deem most conducive to a just and equitable determination of the question. It is expected that they will arrive at that conclusion from their own knowledge and judgment as experts in substantially the same manner as in the case of original appraisements. (See article 474.) S., 2655.

113 Local appraisers.

ART. 1408. It is the duty of local appraisers to diligently and faithfully examine and inspect such goods as collectors may direct, and to correctly ascertain by all reasonable means and report, to the best of their knowledge, the quantity, character, and actual foreign market value thereof at wholesale, on the day of exportation to the United States, in the principal markets of the country whence im-

ported. Their examination embraces the quantity, value, and condition of the goods, and upon their reports are based the classification and the allowance for deficiencies in quantity and damage incurred on the voyage of importation. R. S., 2902 and 2949.

ART. 1409. As the examinations of appraisers are made the basis of the general classification of importations for the imposition and assessment of duty, it becomes necessary that appraisers shall closely inspect the articles ordered for appraisement, and where they retain doubts concerning the quality or denomination of articles they shall submit samples thereof, with their opinions, to collectors for transmission in case of disagreement to the Secretary of the Treasury. R. S., 2949.

ART. 1410. Appraisers must rigidly exclude unauthorized persons from the rooms where goods are awaiting or are under examination for appraisement and forbid their subordinates to hold communication with interested persons concerning the goods under appraisement. R. S., 2949.

114 ART. 1411. Appraisers will not examine goods for appraisement at other places than the appraiser's rooms, except as provided in articles 449 and 450.

In every case where an examination for appraisement is held elsewhere than at the public store the appraiser will state the fact and place of such exceptional examination in his report of the appraisement. S., 2266.

ART. 1412. Appraisers are required to make a special report in writing to collectors in each case where an invoice of goods ordered for appraisement is brought to them by any other person than an official messenger.

ART. 1413. Appraisers will not allow invoices of goods ordered for appraisement to leave their possession, except for return to the custom-house by official messengers.

ART. 1414. Appraisers are required to report in writing to collectors all cases where sampling orders on goods in bond are, in fact or intent, abused by the holders of such orders.

115 ART. 1415. In cases of appeal from the decisions of appraisers, wherein reappraisals are to be made by merchant appraisers, the local appraiser in each case will submit to the collector the names of suitable merchants, known to be well qualified and believed to be disinterested and free from bias, to aid the collector in making a judicious selection.

ART. 1416. Appraisers are, in cases of reappraisement, to give courteous and due attention to the explanations and statements of importers, in person or by representative, relating to the subject-matter under examination, but they are to limit the privilege so accorded to one person in each single case of reappraisement, to receive only statements of fact, to require all facts to be stated concisely and not argumentatively, and to pursue their inquiry into the question of the actual character and dutiable value of the goods under reexamination in such manner as they deem most conducive to a just and equitable determination of the question.

Merchant appraisers appointed in cases of appeal from the decisions of the customs appraisers are also to be governed by this article.

ART. 1417. Examiners of merchandise shall attach their initials to all classifications or packages examined by them, but appraisers shall sign their full names to all reports and submit their official reports in writing.

116 *Treasury Department, Document No. 712. Secretary, M. M. and I. R.*

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *July* 1, 1885.

To collectors of customs:

The following decisions of the Department for the month of June, 1885, upon the construction to be given to acts of Congress relating to the tariff, navigation, and other subjects are published for the information and guidance of officers of the customs and others concerned.

DANIEL MANNING, *Secretary.*

* * * * * * *

117 (6957.)

Reappraisement of Merchandise.

TREASURY DEPARTMENT, *June* 9, 1885.

SIR: Your attention is called to the instructions of the Department contained in synopsis 2655 and to regulations of 1884, articles 469, 1174, 1407, 1416, relating to the method of procedure in reappraising merchandise. The law of reappraisement is precisely the same as that of original appraisement, and there is no authority or justification for the system, which it appears has grown up in your office, of treating a reappraisement as in the nature of a trial in a court of law, wherein the reappraising officers sit as judges and render decisions according to the preponderance of testimony adduced.

The law provides that the merchant appraiser shall be familiar with the character and value of the goods in question, and it is presumed that the general appraiser will have or will acquire such expert knowledge of the goods he is to appraise as to enable him to intelligently perform his official duty with a due regard for the rights of all parties and independently of the testimony of interested witnesses.

The functions of the reappraising board are the same as those of the original appraisers. They are themselves to appraise the goods, and not to depend for their information upon the appraisement of so-called experts in the line of the goods in question.

118 I am informed that it is the practice to hold reappraisements on certain days of the week, within the hours of twelve and three, and that, owing to the number of appeals pending, two or more cases are often heard at the same time by different merchant appraisers, all acting in conjunction with the general appraiser;

that importers and witnesses are permitted to throng the general appraiser's office, in whose presence the conclusions of the appraising board are often announced, and that if such conclusions are not satisfactory to the importer he is allowed to protest and reargue the case with a view to a modification of the finding, in which he is often successful.

It is plain that all this is a wide departure from the methods of reappraisement contemplated by the law and regulations, and must necessarily result in injury to the revenue and general demoralization among officials and importers.

The local appraisers are expected to do their full duty in ascertaining, estimating, and appraising the true and actual market value or wholesale price of imported merchandise at the time of exportation and in the principal markets of the country whence the same has been imported. When appeals are taken from the valuation so found it is expected that the general appraiser and merchant appraiser selected to act with him will reappraise the merchandise in substantially the same manner as is pursued on original appraisement.

Section 2922 of the Revised Statutes authorizes appraisers to call before them and examine under oath any owner, importer, consignee, or other person touching anything which they may
119 deem material in ascertaining the true market value or wholesale price of any merchandise imported.

It is by this law that appraisers are authorized to summon witnesses, but there is no authority for the public examination of such witnesses or their cross-examination by importers or counsel employed by such importers.

The appraising officers are entitled to all information obtainable concerning the foreign market value of goods under consideration, but such information is not public property. It is due to merchants and others, called to give such information, that their statements shall be taken in the presence of official persons only. It must often occur that persons in possession of facts which would be of value to the appraisers in determining market values are deterred from appearing or testifying by the publicity given to reappraisement proceedings.

Article 1416 of the regulations enjoins appraisers to give courteous and due attention to the explanations and statements of importers, in person or by representative, relating to the subject-matter under investigation, but they are to limit the privilege so accorded to one person in each single case of reappraisement, to receive only statements of facts, and to require all facts to be stated concisely and not argumentatively.

This regulation has been so construed that attorneys-at-law and custom-house brokers have appeared and acted as representatives of the importer on reappraisement. Such a construction is erroneous. The representative of the importer in such cases should be his employé or salesman—some person belonging to his house familiar with the facts touching the subject-matter under considera-
120 tion. There is no office here for the lawyer or custom-house

broker, and such persons, as well as all others not officially called before the appraisers, should be excluded.

This Department expects that all appraising officers, including the general appraisers, will co-operate in all proper measures for the suppression of undervaluations and the just and uniform appraisement of imported merchandise, to the end that the tariff laws may be strictly enforced and fair and honorable merchants protected from loss by the dishonest practices of unscrupulous importers.

Very respectfully, DANIEL MANNING, *Secretary.*

Mr. A. J. Perry, United States general appraiser, New York city.

121 Under the instructions published August 1st, 1886, "for the information and guidance of officers of the customs and others concerned" is the following:

(7029.)

Defining what constitutes being "actually employed in aid of the customs."

TREASURY DEPARTMENT, *July* 20, 1885.

Section 2733 of the Revised Statutes of the United States provides for the payment of compensation to inspectors only when "actually employed in aid of the customs."

In connection with the provisions of the section above referred to attention is invited to the following extract from the opinion of the Solicitor of the Treasury of June 24, 1885, as to the construction to be placed upon the opinion of the Attorney General of January 27, 1885, relative to the compensation of inspectors of customs:

* * * * * * *

"The regulations of the Treasury Department provide that, where there is a surveyor, inspectors are to be assigned to duty by him; otherwise by the collector. It is necessary, therefore, there should be an assignment. After this assignment has once been made it seems to me that an inspector is to be considered as actually employed when he is in a position—when he holds himself in readiness to perform the duties of his office, whether, in point of fact, he is doing active service or not. Some part of his duty consists in being vigilant in order to prevent breaches of the revenue law. He is to be on guard, and while guarding he is as much actually employed, in the sense of the statute, as when seizing smuggled or undervalued goods. This watch must be kept as well Sundays and holidays as at any other times.

"In this view of the case I think an inspector is to be paid for Sundays and holidays after he is assigned to duty; also while performing clerical services or awaiting directions, and, in accordance with an opinion of Secretary McLean, in which I concur, rendered in 1833 under a statute with a similar qualification, while confined by temporary sickness incurred while on duty.

"In all cases, however, the surveyor or collector should be required to certify, for the information of the accounting officer, when the inspector was assigned to duty and when his employment terminated."

122 In conformity with the opinion above quoted, payment of compensation will be made hereafter to an inspector of customs for the time during which he is assigned to duty or is awaiting orders.

DANIEL MANNING, *Secretary.*

Collectors and other officers of the customs.

123 Under the instructions published November 1, 1886, "for the instruction and guidance of officers of the customs and others concerned," is the following:

(7800.)

Dutiable Value—Methods of Ascertaining; Reappraisers—Functions of.

TREASURY DEPARTMENT, *October* 8, 1886.

GENTLEMEN: The Department duly received your letter of the 13th ultimo, relative to the reappraisement of woollen goods imported by you on consignment from Belgium, which resulted in an advance of the invoice valuation of certain billiard-cloth covered thereby, while, as stated by you, the invoice values were practically sustained as to the remainder of the woollen goods.

The ground of your objection to the findings of the reappraisers in this case appears to concern principally the method of ascertaining the foreign market value of the billiard-cloth in question.

You contend that, inasmuch as none of the billiard-cloths in question are or have been sold in the Belgium markets, and that as there was, therefore, at the time of exportation no stated market value or wholesale price in those markets, the proper course for the appraisers to pursue was to have made inquiry into the cost of production of said goods, instead of adopting which method the appraisers, according to your statement, arrived at the declared value by taking the price at which the goods sold for in the markets of this country and deducting therefrom the expenses of transportation, sale, &c.

By section 2902, Revised Statutes, it is made the duty of
124 the appraisers, by all reasonable ways and means in their power, to ascertain, estimate, and appraise the true and actual market value and wholesale price of the merchandise at the time of exportation in the principal markets of the country from whence the same has been imported.

The appraising officers may adopt any reasonable and proper means of ascertaining this value of imported merchandise, and, unless on the face of the appraisement corruption or irregularity appears, their findings cannot be questioned.

The law constitutes them the tribunal for this specific purpose, and their valuation must be their own impartial judgment, uninfluenced by the Department.

In the present case it appears from the report of the general appraiser that the result was arrived at by ways and means which the appraisers deemed reasonable, and the Department cannot interfere with the same.

Had they been unable to satisfactorily arrive at such value the course prescribed in section 9, act of March 3, 1883, might have been followed, but they are not required to resort to that method, as intimated by you, except in such emergencies.

The appraising officers are not bound, nor would it be expedient or proper for them, to inform importers of the particular facts and circumstances connected with their findings, nor the conclusions upon which their judgments were formed.

125 The return of the reappraisers in this case therefore is a finality, and "neither the President nor any head of a Department nor the courts can interfere so long as the forms of law are followed by appraising officers and there is no fraud." (See synopsis, 7235.)

Respectfully yours, C. S. FAIRCHILD,
Acting Secretary.

Messrs. Henry W. T. Mali & Co., 329 Broadway, New York.

126 Also, under date of February 1st, 1887, the following:

(7976.)

Reappraisements—Mode of Conducting, Qualifications of Merchant Appraiser, Rights of Importers, &c.

TREASURY DEPARTMENT, *January* 12, 1887.

SIR: On a recent trial in the United States circuit court for the southern district of New York, in the case of W. E. Iselin *et al.* against E. L. Hedden, collector of customs (new series, 11066), where the question as to irregularities on recent reappraisements of imported merchandise was involved (which case was tried before Judge Wheeler and a jury), the learned judge expressed himself as follows:

"It seems to me that when an importer gives notice, under this section of the statute (2930, R. S.), that he desires a reappraisement and the collector complies with the notice and appoints a merchant appraiser to act with the general appraiser the fitness of the merchant appraiser is not inquirable into, if he is one of the class pointed out by the statute.

"The collector is charged with the duty of selecting from the class such a one as he sees fit, and if he does that there is no inquiry open about it. After that is done, I think, the importer is entitled to know who the board are, to know who the merchant appraiser
127 is, and the general appraiser who is to act in the case—to know that they constitute the board.

"The board, I think, are to reappraise the goods substantially on view of the goods—that is, by looking at them.

"The importer has a right to know who the board are, to know when they act on his importation; he has a right to be there and

know fairly that the cases exhibited to the appraisers are his goods, to have an opportunity to examine them, and to explain them so far as he may desire to do so; and he has a right to be present in that sense at the appraisal.

"As to the taking of testimony, I think the statute means that the board itself is to be governed by its own views of the necessities of the case; if, when they enter upon their duties and see the goods, they think they want some proof or want to make inquiry it is their duty to do it by all proper means. I think they would have a right to ask anybody that they thought knew, especially to call the importer himself, his clerks, with his invoices and his correspondence, and have them all brought in to look at — in coming to their conclusion.

"I do not think the board are bound to have a trial—that is, such a trial as we have in court. I do not think they are bound to give the party an opportunity himself to bring in witnesses or to
128 cross-examine witnesses in the sense in which we have cross-examination, but I think the party is entitled to a fair chance to know what is going on, to know that his case is up, to know that his goods are being examined, and to exhibit his goods, present them to the board for their examination, inspection, and determination, and witness what they do, so as to have an opportunity to call their attention to anything he desires; and I think, if he isn't there himself, he has a right to have his clerk there or his agent or a lawyer, if a lawyer wants to be an agent in that business, to be there and suggest anything that is proper pertaining to the examination within the reasonable discretion of the board itself.

"The board are to make a real appraisal. I think a court trying a case like this can only determine the question as to whether there was a real appraisal; we cannot review their judgment; we cannot review their proceedings as to when they should go on or how and as to the number of witnesses and all that. I do not think we can review that. I think it was in their discretion to call for what they wanted, and that the importer has only a right to be present and see what is going on and have a fair chance to illustrate his goods in any way by showing or exhibiting them.

"It occurs to me it is like an appraisal of real estate when
129 it is wanted for some public purpose or an appraisal of the estate of a deceased person; the appraisers do not have a hearing; they appraise in view, look at the property, and I think the owner has always a right to be around there when it is looked at, and suggest about it.

"If these plaintiffs were cut off from any of these rights, and the testimony is not clear as to that, why, I think this is no appraisal. If they were not cut off from any of these rights it is a good one."

The views thus promulgated by the learned judge are substantially those heretofore expressed by the Department in its general regulations and in its instructions to your predecessor of June 9, 1885. (Synopsis, 6957.)

It will be particularly noticed, however, that, among other things, the learned judge expresses the opinion that the party calling for a reappraisement "is entitled to a fair chance to know what is going

on, to know that his case is up, to know that his goods are being examined, and to exhibit his goods, present them to the board for their examination, inspection, and determination, and witness what they do, so as to have an opportunity to call their attention to anything he desires," and then that, "if he isn't there himself, he has a right to have his clerk there or his agent or a lawyer, if a lawyer wants to be an agent in that business, to suggest anything that is proper pertaining to the examination within the reasonable
130 discretion of the board itself," but that it is within the discretion of the board of reappraisers "to call for what they want, and that the importer has only a right to be present and see what is going on and have a fair chance to illustrate his goods in any way by showing" where that difference is.

These views expressed by the learned judge are concurred in by the Department and should be adopted as a rule of action in reappraisements held at your port, and, so far as previous instructions may conflict therewith, such instructions are hereby modified and amended accordingly.

Respectfully yours,

DANIEL MANNING,
Secretary.

George V. Brower, Esq., U. S. general appraiser, New York, N. Y.

131 (Endorsed:) U. S. circuit court, eastern district of Penn'a. Thomas J. Mustin *et al. vs.* John Cadwalader, collector, &c. Bill of exceptions. Filed 26 Jul., 1887.

132 And afterwards, to wit, on the 26th day of July, A. D. 1887, the court enters the following order:

Surwrit of Error

U. S. C. C. Oct. Sess., 1886.

THOMAS J. MUSTIN *et al.*
vs.
JOHN CADWALADER, Collector, &c. } 68.

And now, July 26, 1887, the amount of security in the above case is fixed at two hundred and fifty dollars.

(Endorsed:) 68. Oct. sess., 1886, U. S. C. C. Mustin *vs.* Cadwalader. Order fixing am't of security. Filed 26 July, 1887.

133 And afterwards, to wit, on the 6th day of August, A. D. 1887, the plaintiffs, by their attorney, comes into court here and deposits the sum of two hundred and fifty dollars into the registry of said court as security.

134 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } *sct:*

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third cir-

cuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of Thomas J. Mustin *et al. vs.* John Cadwalader, collector, &c., No. 68, October session, 1886, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this tenth day of August, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and twelfth.

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

SAMUEL BELL,
Clerk of C. C.

Endorsed on cover: E. Pennsylvania C. C. U. S. No. 1002. Thomas J. Mustin, John D. Ford, William W. Foulkrod, and William Syckelmore, Jr., trading as Thomas J. Mustin and Company, plaintiffs in error, *vs.* John Cadwalader, collector of customs for the district of Philadelphia. Filed August 13th, 1887.

Assignment of Error.

Supreme Court of the United States. October Term, 1887.

THOMAS J. MUSTIN, JOHN D. FORD, WILLIAM W. FOULKROD, and WILLIAM SYCKELMORE, Junior, Trading as Thomas J. Mustin and Company, Plaintiffs in Error,
vs.
JOHN CADWALADER, Collector of Customs for the District of Philadelphia.
} No. 1002.

Afterwards, to wit, on the first Monday in the October term, 1887, aforesaid, before the Justices of the Supreme Court of the United States, at the Capitol in the city of Washington, come the said Thomas J. Mustin, John D. Ford, William W. Foulkrod, and William Syckelmore, Junior, by Henry Edwin Tremain, their attorney, and say that in the record and proceedings aforesaid there is error in the several rulings of the court to which exception has been taken, which exceptions are more fully and at large stated in the bill of plaintiffs' exceptions as settled and allowed and made of record; and that by the record aforesaid it appears that judgment aforesaid, in form aforesaid given, was given for the said defendant, John Cadwalader, collector of customs for the district of Philadelphia, against the said plaintiffs, whereas by the law of the land the said judgment should have been given for the said plaintiffs in error against the said defendant in error; and the said plaintiffs pray that the judgment aforesaid for the errors aforesaid and other errors in the record and proceedings aforesaid, as the same appear more fully therein, may be reversed, annulled, and altogether held for nothing, and that they, the plaintiffs in error, may be restored to those things which they have lost by reason of said judgment.

HENRY EDWIN TREMAIN,
Of Counsel for Plaintiffs in Error.

[Endorsed:] October term, 1887. No. 1002. Supreme Court of the United States. Thomas J. Mustin *et al.*, pl'ffs in error, *vs.* John Cadwalader, collector, &c. Assignments of error.

[Stamped:] Office Supreme Court U. S. Filed Sep. 24, 1887. James H. McKenney, clerk.

No. 321.
Col. Coal & Iron Co. et al
v.
The United States.
} p. 654

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Tp. 32 S.

Tp. 32 S.

Tp. 33 S.

Tp. 34 S.

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Range 64 W

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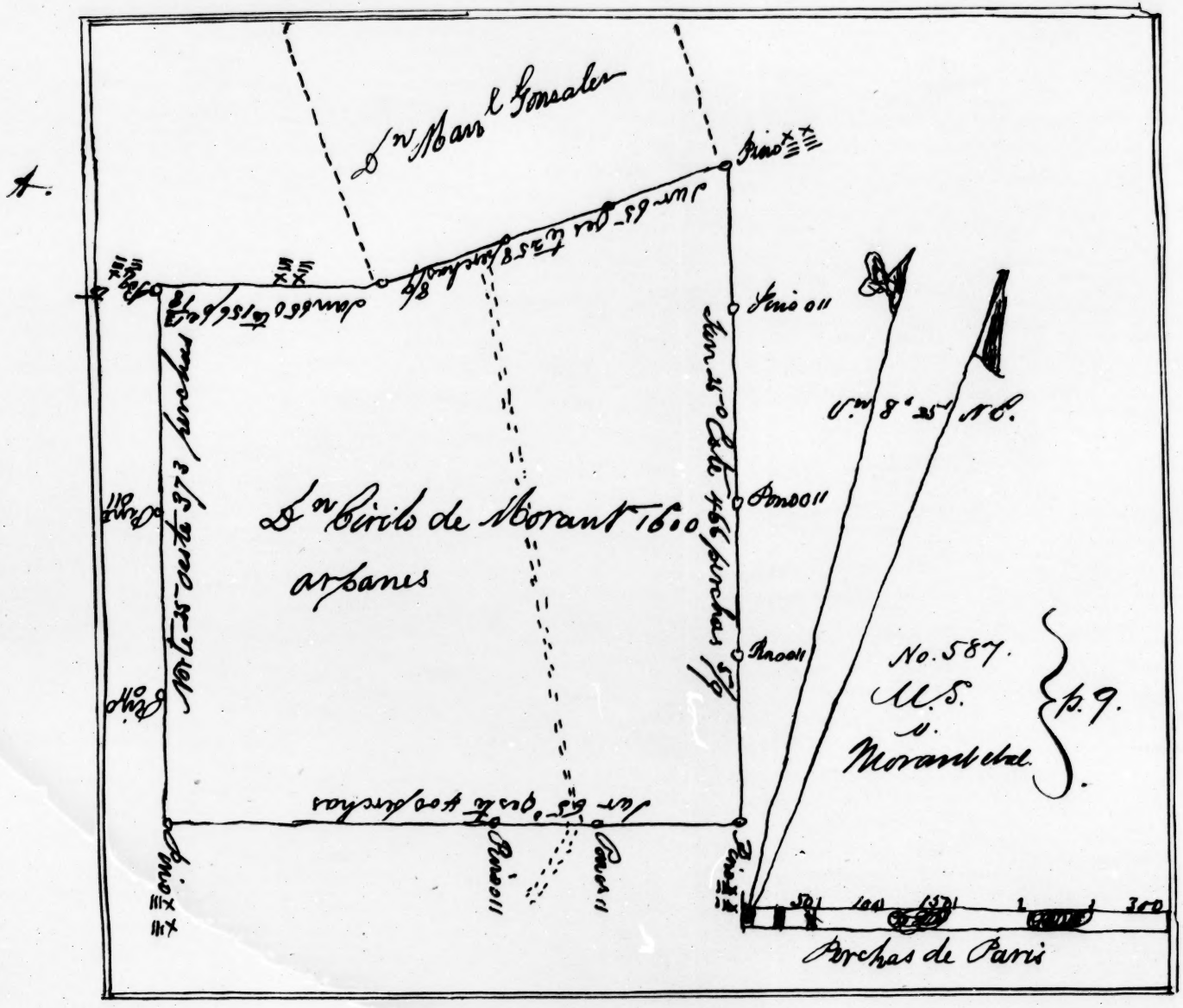
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No. 587. M.S. o. Moraubetae. } p. 59.

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